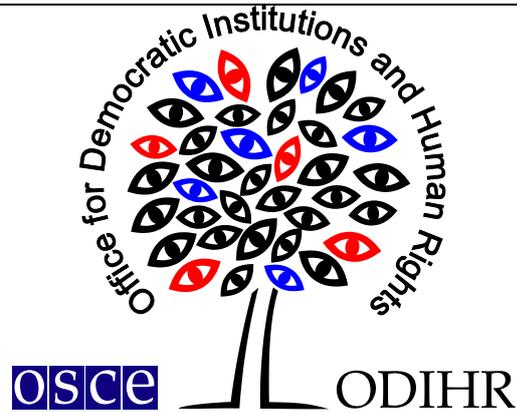


Warsaw, 17 December 2013

Opinion-Nr.: DV-GEO/241/2013 [AIC]

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OPINION

ON THE DRAFT AMENDMENTS TO THE LEGAL

FRAMEWORK ON PREVENTING AND COMBATING

DOMESTIC VIOLENCE

IN GEORGIA

based on an unofficial English translation of the draft amendments

OSCE Office for Democratic Institutions and Human Rights

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I. INTRODUCTION

1. *On 31 October 2013, the Chairperson of the Healthcare and Social Issues Committee of the Parliament of Georgia sent an official letter to the Director of the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) requesting a review of a package of draft amendments to the legal framework on preventing and combating domestic violence in Georgia.*
2. *On 6 November 2013, the OSCE/ODIHR Director responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of these draft amendments with OSCE commitments and international human rights standards.*
3. *The above-mentioned package includes draft amendments to the following legal acts (hereinafter “the Draft Amendments”).*
 - *the Law on the Elimination of Domestic Violence, Protection of and Support to its Victims (hereinafter “the Law”);*
 - *the Code on Administrative Offences of Georgia;*
 - *the Administrative Procedural Code of Georgia;*
 - *the Civil Code of Georgia;*
 - *the Criminal Code of Georgia;*
 - *the Criminal Procedures Code of Georgia;*
 - *the Imprisonment Code of Georgia;*
 - *the Law on Legal Status of Foreigners and Stateless Persons;*
 - *the Law on Procedure of Execution of Non-custodial Penalties and Probation;*
 - *the Law on Refugee and Humanitarian Status;*
 - *the Law on Medical Activity; and*
 - *the Law on Legal Aid.*
4. *This Opinion was prepared in response to the letter of 31 October 2013 from the Chairperson of the Healthcare and Social Issues Committee of the Parliament of Georgia.*
5. *The OSCE/ODIHR conducted this assessment within the mandate established by the OSCE Action Plan for the Promotion of Gender Equality, which states that “[t]he ODIHR, in co-operation with other international organisations and relevant national bodies and institutions, will assist OSCE participating States in complying with international instruments for the promotion of gender equality and women’s rights, and in reviewing legislation to ensure appropriate legal guarantees for the promotion of gender equality in accordance with OSCE and other commitments.”*

II. SCOPE OF REVIEW

6. **The scope of this Opinion covers only the Draft Amendments, submitted for review, and the legislation that they are amending. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing prevention and protection from domestic violence, and the prosecution of perpetrators in Georgia.**

7. The Opinion raises key issues and provides indications of areas of concern. In the interests of concision, the Opinion focuses more on problematic areas rather than on the positive aspects of the Draft Amendments. The ensuing recommendations are based on international standards and practices related to the prevention and protection from domestic violence, as well as on relevant OSCE commitments. Particularly, the Opinion refers to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter “the Istanbul Convention”),¹ given Georgia’s expressed readiness to make its legal framework compliant with the norms and principles contained therein.² The Opinion will also seek to highlight good practices from other OSCE participating States in this field.
8. This Opinion is based on informal English translations of the Draft Amendments, which are attached to this document as Annexes. Errors from translation may result.
9. In view of the above, the OSCE/ODIHR would like to make mention that the Opinion is without prejudice to any written or oral recommendations and comments related to legislation and policy regarding the prevention and protection from domestic violence, as well as prosecution of perpetrators in Georgia, that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

10. At the outset, OSCE/ODIHR welcomes Georgia’s efforts to develop a comprehensive legal and institutional framework for preventing domestic violence, protecting victims from abuse, as well as bringing perpetrators to justice. The Draft Amendments constitute a genuine attempt to make Georgia’s legislation compliant with the Istanbul Convention.
11. At the same time, the Draft Amendments could benefit from certain revisions and additions, particularly with regard to the provisions governing criminal liability for committing acts of domestic violence and the procedures and criteria for issuing restrictive and protective orders. In order to ensure full compliance of the Draft Amendments with international standards, the OSCE/ODIHR recommends as follows:

1. Key Recommendations

- A. to introduce into the Draft Amendments:
 - 1) provisions on the liability of public officials for failing to investigate and prosecute acts of domestic violence, which shall also specify the type of liability, and relevant procedure; [par 58]
 - 2) a procedure whereby a victim of domestic violence may seek civil remedies for damages *against State authorities* that have failed to take the necessary preventive or protective measures within the scope of their powers; [par 86]

¹ CoE Convention on preventing and combating violence against women and domestic violence, Council of Europe Committee of Ministers, CM(2011)49 final, 7 April 2011 (hereinafter “the Istanbul Convention”) not yet signed nor ratified by Georgia.

² The letter of 31 October 2013 from the Chair of the Healthcare and Social Issues Committee of the Parliament of Georgia expressly refers to the objective of reflecting the principles and norms of the Istanbul Convention.

- B. to amend and supplement the amended Article 11¹ of the Criminal Code as follows:
- 1) broaden the scope of physical or sexual offences that may be considered as “domestic violence”; [par 67]
 - 2) introduce a separate paragraph on the specific offence of “economic violence” and define its constitutive elements; [par 68]
 - 3) introduce a separate paragraph on the specific criminal offence of “psychological violence” and define its constitutive elements; [par 71]
- C. to supplement the amendment to Article 137 of the Criminal Code, as well as other articles relating to acts of sexual violence, by expressly stating that the provisions shall apply irrespective of the nature of the relationship between the perpetrator and the complainant; [par 70]
- D. to supplement the provisions of the Criminal Code as follows:
- 1) ensure that the existence of a domestic relationship between a perpetrator and a victim is systematically considered as an aggravating circumstance in the criminal provisions listed under the amended Article 11¹ (insofar as this is not already a constituent element of the offence); [par 65]
 - 2) ensure that the various aggravating circumstances listed under Article 46 of the Istanbul Convention are included under the respective criminal offences, where this is not already the case; [par 66]
 - 3) add the following criminal offences: “Stalking”, “Causing the victim to engage in non-consensual acts of a sexual nature with a third person”, “Intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage”, “Forced abortion and forced sterilisation” and “Female genital mutilation”; [pars 71 and 73]
 - 4) introduce a criminal offence covering sexual intercourse or other actions of a sexual nature with a child, without the requirements of coercion, force or threat, when committed by a person who is in a recognised position of trust, authority or influence over the child (including within the family); [par 84]
 - 5) criminalize intentional sexual activities with a child, where abuse is made of his/her particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence; [par 85]
 - 6) amend Article 71, or other appropriate legislation, by introducing a special statute of limitation in case of child victims; [par 80]
 - 7) clarify the meaning of “helplessness” when stated as an aggravating circumstance; [par 83]
 - 8) introduce a criminal offence for the violation of protective and restrictive orders, and include relevant references to this new criminal provision in the Administrative Procedure Code; [par 97]
- E. to specify in the Draft Amendments (either in the Criminal Code, Civil Code or the Law) that all forms of corporal punishment against children are prohibited, including in the family; [par 78]

- F. to introduce into the Law and other relevant procedural legislation special procedures to prevent direct contact between the perpetrators and the victims at all stages of criminal investigations and in court proceedings, while specifically addressing children's rights; [pars 51, 88-92 and 104]
- G. to specify in the newly amended par 6 of Article 16 of the Law that the violation of protective and restrictive orders is subject to criminal liability; [par 100]
- H. to state in the new par 5 of Article 10 of the Law that the application of measures envisaged in the Criminal Code against the perpetrator shall not prevent the issuance of a restrictive order *or a protective order* and delete the new par 6 of Article 10 of the Law; [par 108]
- I. to amend the Criminal Procedure Code to ensure that criminal investigations and proceedings are not wholly dependent upon a complaint filed by the victim and that proceedings may continue even if he/she withdraws the complaint; [par 110]

2. Additional Recommendations

- J. to widen the scope of Article 4 par g of the Law which defines "family members" to persons in (past and present) relationships even if they do not, or did not, live together; [par 21]
- K. to align the definitions of "family members" found in the Draft Amendments to the Criminal Code and in the Law; [par 22]
- L. to enhance Article 16 par 5 of the Law by specifying a relevant disaggregation of data, and consider introducing a central inter-agency database; [pars 24-25]
- M. to include in the Law a provision expressly protecting victims of domestic violence from all forms of discrimination; [par 27]
- N. to amend the new par 5 of Article 9 of the Law as follows:
 - 1) clarify the nature of "relevant bodies for response"; [par 31]
 - 2) distinguish the reporting requirements in cases involving adult victims from those involving child victims or persons with disabilities; [par 32]
 - 3) expressly state that a child who witnesses a case of domestic violence will be considered a victim; [par 33]
 - 4) clarify that the failure to report is subject to administrative liability as determined by the Code of Administrative Offenses of Georgia, unless otherwise provided in Article 376 of the Criminal Code; [par 35]
- O. to consider broadening the scope of exemptions from criminal liability in Article 376 of the Criminal Code to other categories of professionals involved in domestic violence referral mechanisms; [par 35]
- P. to amend the new Article 16² par 1 sub-par f) of the Law to specify that all victims irrespective of where they choose to stay, shall have the right to legal consultations, in accordance with the Law on Legal Aid; [par 40]
- Q. to specify in the proposed amendment to the Law on Refugee and Humanitarian Status, the alternative (and not necessarily cumulative) nature of the grounds of sexual orientation *and/or* gender identity; [par 42]

- R. to clarify in Article 16² of the Law who shall be competent to apply for a temporary residence permit; [par 46]
- S. to clarify sub-paragraph d² of par 3 of Article 58 of the Law on Legal Status of Foreigners and Stateless Persons to ensure that expulsion proceedings against victims of domestic violence, whose residence status depends on the perpetrator, are suspended when they apply for residence status on humanitarian grounds, regardless of where the victim is temporarily staying; [par 47]
- T. to supplement Article 19 of the Law on the Legal Status of Foreigners and Stateless Persons to provide for the re-issuance of temporary residence permits for foreign victims of forced marriage who lost their residence status in Georgia after having been married against their will in another country; [par 48]
- U. to specify under Article 19 of the Law:
 - 1) in which situations the disclosure of confidential information about the victim is permitted by law or which applicable legislation regulates this; [par 49]
 - 2) that in case of child victims, the duty to report for certain professional categories (e.g. doctors, social workers, and teachers) should supersede any obligation of confidentiality; [par 50]
- V. to enhance Article 19 of the Law, by specifying that a violation of the confidentiality rule could lead to criminal, civil, administrative or disciplinary liability; [par 52]
- W. to amend the new Article 14¹ of the Law as follows:
 - 1) clearly identify the “relevant bodies for response”; [par 54]
 - 2) expressly state the type of liability for failure to report and make reference to the Code of Administrative Offences; [par 55]
 - 3) specify the obligations of the various bodies involved in the detection of domestic violence committed against a child to inform him/her about the process, seek his/her views, and motivate their decisions; [pars 56-57]
- X. to review the rules governing the jurisdictional competence of courts to ensure that acts of domestic violence committed abroad by nationals or persons having their habitual residence in Georgia, can be prosecuted in Georgia, even if the offence is not criminalized in the other country; [par 75]
- Y. to broaden the scope of the new Article 16² par 3 of the Law to provide for specific protective measures for children throughout the investigation and court process; [par 90]
- Z. to supplement Article 10 par 3 and Article 16 par 3 sub-par h of the Law by including cross-references to relevant provisions of the Administrative Procedural Code; [par 93]
- AA. to clarify the wording of the amendments to par 3 of Articles 21¹⁵ of the Administrative Procedural Code and to par 3 sub-par f¹ of Article 16 of the Law by expressly stating that it shall be possible to remove an abuser from private premises irrespective of who owns the premises; [par 95]
- BB. to clarify or supplement amendments to the Administrative Procedural Code as follows:

- 1) amend the new Article 172⁶ of the Code on Administrative Offences so that certain professionals are exempted from administrative liability in cases where adult victims did not consent to a report; [par 36]
- 2) broaden the scope of pars 3 and 4 of Article 21¹⁵ of the Administrative Procedural Code to include the protection of relatives of the victim, other witnesses, social workers or other persons assisting the victim; [par 99]
- 3) in Article 21¹² of the Administrative Procedural Code, specify that the term “family members” is defined by the Law [on the Elimination of Domestic Violence]; [par 101]
- 4) provide that protective orders and court confirmation of the police restrictive orders may be pronounced by the court even in the absence of the respondent party and his/her representative (*ex parte*); [par 109]

CC. to consider:

- 1) introducing specific and adequate measures to protect persons with disabilities from acts of domestic violence; [pars 30 and 105]
- 2) providing for interpretation services to the victims, in addition to the duty to inform; [par 37]
- 3) including provisions in the draft amendments to the Law of Georgia on Refugee and Humanitarian Status on gender-sensitive reception and asylum procedures or expressly providing for the development of gender-sensitive guidelines on asylum procedures; [par 44]
- 4) introducing, as needed, specific measures to protect the privacy rights of child victims from undue exposure to the public; [par 51]
- 5) introducing, as appropriate, under the respective domestic violence provisions of the Criminal Code, references to the criminal liability for aiding and abetting such crimes, or alternatively provide for civil or administrative liability; [par 72]
- 6) criminalizing serious forms of sexual harassment; [par 74]
- 7) supplementing Article 16² of the Law to include the right of the victim of domestic violence to choose, where possible, the gender of the police officer doing the intake interview or of any other criminal justice official; [par 91]
- 8) introducing fast-track procedures for cases of domestic violence before courts; [par 92] and

DD. to ensure that:

- 1) sufficient funding is allocated to ensure that prevention and protection mechanisms will have the human, financial, material and technical capacity to provide support and crisis counselling to domestic violence victims; [par 38]
- 2) proper guidelines and training on data collection regarding cases of domestic violence are available and implemented in a systematic manner. [pars 24-26 and 62].

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards of Preventing and Combating Domestic Violence

12. Over the last twenty years, the notion of an obligation for the State to protect individuals from domestic violence, previously considered a “private” or “family” matter, has become increasingly prevalent, both at the national and international level. This development has been encoded in a number of binding international legal instruments.
13. While the UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”)³ does not directly mention domestic violence or violence against women, its Article 2 does stipulate that “State Parties condemn discrimination against women in all its forms”, and obliges States to eliminate, through all appropriate measures, such discrimination, including by modifying or abolishing laws, regulations, customs and practices that discriminate against women. Later, the UN Committee on the Elimination of All Forms of Discrimination against Women, clarified that gender-based violence constituted discrimination within the meaning of Article 1 of the CEDAW.⁴ The Committee specified that this referred to “violence that is directed against a woman because she is a woman or that affects women disproportionately”, and more specifically “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”, including private acts of violence and family violence. The Committee also specified that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.
14. Shortly after, the UN General Assembly issued a Declaration on the Elimination of Violence against Women⁵, in which it urged States to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or private persons”. The declaration explains that violence in the family may include battery, sexual abuse, and marital rape.⁶ For children, the United Nations Convention on the Rights of the Child (hereinafter “the CRC”)⁷ likewise requires that legislative measures shall protect children from all forms of physical or mental violence, injury or abuse, neglect, maltreatment or exploitation.
15. At the European level, since the 1990s, the Council of Europe (hereinafter “the CoE”) has intensified its activities to combat all forms of violence against women, including domestic violence, notably with the adoption of the Recommendation (2002)5 by the

³ United Nations Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Georgia acceded to this Convention on 26 October 1994 and to the Optional Protocol to the CEDAW on 1 August 2002.

⁴ General Recommendation No. 19 of the Committee on the Elimination of All Forms of Discrimination Against Women, passed at the CEDAW Committee’s 11th session (1992), par 6.

⁵ Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, U.N. GAOR, 48th Sess., at 217, U.N. Doc. A/48/49 (1993) (hereinafter “the 1993 Declaration on Violence Against Women”).

⁶ See 1993 Declaration on Violence Against Women, art. 2.

⁷ United Nations Convention on the Rights of the Child (hereinafter “CRC”), adopted by General Assembly resolution 44/25 on 20 November 1989. Georgia acceded to this Convention on 2 June 1994.

- Committee of Ministers on the protection of women against violence.⁸ In this Recommendation, the Council of Ministers also stresses the need for victim protection and support, as well as awareness-raising, adjustment of legislation, and training of professionals on adequate response to such violence.
16. In 2011, the CoE Ad Hoc Committee on prevention and combating violence against women and domestic violence (CAHVIO), created by the Committee of Ministers, developed the Istanbul Convention.⁹ It is the first legally binding instrument in Europe to create a comprehensive legal framework to protect women from acts of violence as well as prevent, prosecute and eliminate all forms of violence against women, including domestic violence. It is welcome that Georgia is considering signing and ratifying the Istanbul Convention. In this context, the amendments to the legal framework on prevention and protection from domestic violence offer a good opportunity to align all relevant laws with the Istanbul Convention, prior to this Convention's ratification.
 17. The European Court of Human Rights (hereinafter "the ECtHR") has expressly stated in its case law that domestic violence constitutes a form of discrimination and violation of women's human rights and that national authorities have a positive obligation to protect victims of domestic violence.¹⁰ More recently, it has specified that this positive obligation includes not only setting up a legal framework aimed at preventing and punishing ill-treatment by private individuals, but also applying the relevant laws in practice.¹¹
 18. OSCE participating States have also confirmed the importance of addressing violence against women, through the adoption of an Action Plan for the Promotion of Gender Equality (2004), which includes directives to the OSCE structures to develop activities for the prevention of all forms of gender-based violence.¹² More specifically, the OSCE Ministerial Council Decision on Preventing and Combating Violence Against Women (2005) issues recommendations to OSCE participating States for measures to improve prevention of violence and the protection of and assistance to victims,¹³ as well as prosecution of perpetrators, while addressing their need for appropriate treatment.¹⁴
 19. Based on the above international standards on preventing and combating domestic violence, four main aspects can be distinguished in this regard, namely prevention, protection, prosecution, and partnership/multi-agency cooperation. These areas reflect

⁸ Recommendation Rec (2002)5 of the Committee of Ministers to CoE Member States on the protection of women against violence adopted on 30 April 2002.

⁹ The Istanbul Convention was opened for signature in mid-2011, but will not enter into force until it is ratified by at least ten countries, eight of which must be Member States of the Council of Europe. As of 9 December 2013, thirty-two countries have signed this Convention, with eight of them (Albania, Austria, Bosnia and Herzegovina, Italy, Montenegro, Portugal, Serbia and Turkey) having ratified it so far.

¹⁰ See *Opuz v. Turkey*, European Court of Human Rights (hereinafter "ECtHR") judgment of 9 June 2009 (Application No 33401/02), par 191.

¹¹ See *Eremia v. Republic of Moldova*, ECtHR judgment of 28 May 2013 (Application No 3564/11), par 56.

¹² OSCE Ministerial Council Decision MC DEC/14/04 on the 2004 OSCE Action Plan for the Promotion of Gender Equality of 7 December, 2004, Chapter 4, par 44.

¹³ Such measures include *inter alia* the provisions of full, equal and timely access to justice and effective remedies; medical and social assistance, including emergency assistance; confidential counselling; and shelter. See OSCE Ministerial Council Decision MC DEC/15/05 on Preventing and Combating Violence Against Women (2005), par 4.

¹⁴ *ibid.*

the integrated human rights based approach referred to as the “four P approach”, which is increasingly used in recent international instruments, particularly the Istanbul Convention.¹⁵

20. The following review will address these aspects in separate sections on prevention, protection and prosecution, by assessing the compliance of the Draft Amendments with international standards, while integrating the aspect of partnership, as appropriate.

2. Prevention

2.1. General Comments

21. Article 4 par g of the Law defines “family members” in a broad manner by including relatives by blood, marriage or adoption, and also specifically referring to persons in non-formal cohabitation, which is welcome.¹⁶ However, the wording appears to exclude certain relationships, e.g. relationships between persons having (or having formerly been involved in) an intimate, romantic or sexual relationship, where they do not or did not actually live together.¹⁷ In the Explanatory Report to the Istanbul Convention, it is stated that the joint residence of the perpetrator and the victim is not required, for certain acts to qualify as “domestic violence”,¹⁸ and this could be reflected more clearly in Article 4 par g of the current Law.
22. The explanatory note under the amended Article 11¹ of the Criminal Code which deals with the criminal offence of “domestic violence” appears to define “family members” somewhat differently to Article 4 par g of the current Law.¹⁹ For example, it does not include the “parents of [the] spouse” nor “persons in non-registered cohabitation”, while including “persons who live or lived together”. Reciprocally, the Law does not refer to “foster children”, “foster parent’s spouse” nor to “adoptive parents.” It is advisable to align the two definitions of “family members” in the Draft Amendments to the Criminal Code and in the Law to ensure consistency, ideally by using the

¹⁵ See pars 63 and 116 of the Explanatory Report to the Istanbul Convention.

¹⁶ Article 4 par g of the Law defines “family members” as “mother, father, grandfather, grandmother, spouse, child (stepchild), adopted child, foster parents, grandchild, siblings, parents of spouse, son/daughter-in-law. For the purpose of this law family member also includes, former spouse, persons in non-registered cohabitation, guardians.”

¹⁷ See Section 3.4.2.2 of the 2012 UN Women Handbook for Legislation on Violence against Women (hereinafter “the 2012 UN Women Handbook for Legislation on VAW”), available at http://www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2012/12/UNW_Legislation-Handbook%20pdf.pdf. See also, for example, the Spanish Organic Act on Integrated Protection Measures against Gender Violence (2004) which defines domestic relationships broadly to include relationships with a spouse or former spouse, non-marital relationships, non-cohabiting relationships, romantic and sexual relationships, as well as relationships between family or household members, such as ascendants, descendants, persons related by blood, persons residing together and minors or disabled individuals under guardianship or custody.

¹⁸ See par 42 of the Explanatory Report to the Istanbul Convention.

¹⁹ The explanatory note under the amended Article 11¹ of the Criminal Code refers to “spouse, mother, father, grandfather, grandmother, child/(step child), foster child, foster parent, foster parent’s spouse, adoptive child, adoptive parents, guardian, grandchild, siblings, son-in-law, daughter-in-law, former spouse, also persons currently or formerly living in the same household.”

broadest coverage. This is in line with international standards, which urge States to adopt the broadest possible definitions of acts of domestic violence.²⁰

2.2. Data Collection

23. Article 16 par 5 of the Law provides that the police shall separately mention in its report information (data) on the facts of domestic violence, measures taken, number of victims, measures enforced against the offender as well as other data. It is unclear whether other entities e.g. the victim identification group, health institutions, shelters, crisis centers, and social services, are also responsible for collecting data on domestic violence.
24. Good practices in terms of data collection on domestic violence recommend that data should at a minimum be disaggregated by sex, age, type of violence and the relationship between the perpetrator and the victim (current/former partner, marital status, cohabitation or not, family relationship).²¹ Other data collected could also include information about disabilities, if any,²² or whether there is a weapon in the household, as is done in other OSCE countries such as the United States. It is recommended that an amendment be introduced to supplement Article 16 par 5 of the Law accordingly. This would address some of the recommendations made to Georgia by the UN Human Rights Committee.²³
25. Generally, unless it exists already, a central inter-agency database would be a welcome introduction,²⁴ either in the Draft Amendments, or in secondary legislation, and would help ensure that data collection is done in a centralized and concerted manner. Such an agency should be responsible for organising, monitoring, controlling and giving uniform instructions, as well as training staff on the collection of administrative data on domestic violence.²⁵
26. In any case, the storage and use of personal data should respect international standards on personal data protection, particularly the conditions provided for by the CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.²⁶

²⁰ See Section 3.4.2.1 of the 2012 UN Women Handbook for Legislation on VAW.

²¹ See Recommendations on pages 21-23 of the CoE Study on Administrative data collection on domestic violence in CoE member states (2008) available at [http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-DC\(2008\)Study_en.pdf](http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-DC(2008)Study_en.pdf).

²² See par 53 of the the Thematic Study on the Issue of Violence Against Woman and Girls and Disability, Report of the Office of the UN High Commissioner for Human Rights, 30 March 2012, available at <http://www.ohchr.org/Documents/Issues/Disability/ThematicStudyViolenceAgainstWomenGirls.pdf>.

²³ See par 8 of the Concluding Observations of the Human Rights Committee on the 3rd periodic report submitted by Georgia (2007), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/453/20/PDF/G0745320.pdf?OpenElement>.

²⁴ See par 31 of the Report of the UN Secretary-General to the General Assembly on Intensification of efforts to eliminate all forms of violence against women, 2 August 2010, available at http://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/65/A_65_208.pdf

²⁵ *Op. cit.* footnote 21, Section 3.2.

²⁶ Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), ratified Georgia on 14 December 2005.

2.3. Non-Discrimination, Gender Mainstreaming and a Child Sensitive Approach

27. Article 4 par 2 of the Istanbul Convention states that measures to protect the rights of victims shall be secured without discrimination on any ground. The current legislation on domestic violence does not specifically address or take into account the needs of vulnerable persons.²⁷ Therefore, it is recommended to include a specific provision, protecting victims of domestic violence from discrimination, in line with the grounds listed in the draft Law on Georgia on Elimination of All Forms of Discrimination, which is currently being revised.²⁸ In particular, consideration may be given to including “sexual orientation or gender identity” or “internal displacement status” since this would reflect the experience of certain vulnerable social groups in Georgia which have suffered and may continue to suffer marginalization.²⁹
28. In addition, the Georgian legal framework does not specifically require human rights and gender mainstreaming in the provisions and sections on the prevention of domestic violence, nor does it include positive measures specifically targeting women. It is recommended to outline this aspect with greater precision, to take into account the fact that women are still more likely to be exposed to domestic violence than men. The responsible authorities should raise awareness on gender equality and support the empowerment of women in all spheres of life, also with the aim of reducing women’s vulnerability to violence. Special measures to promote gender equality in the employment sector, facilitate women’s equal participation in the labor market, and strengthen women’s economic independence, could help reduce the risk of women being dependent on perpetrators (which consequently makes them unwilling to report cases of domestic violence or press charges).³⁰
29. It is worth mentioning that the child’s right to be heard has particular relevance in situations of domestic violence, as it plays a preventive role against all forms of violence in the home and family.³¹ Special provisions of the Draft Amendments address the specific needs of the child victim of domestic violence (see par 88 *infra*), which is particularly welcome. In this context, it is noted that Georgia has signed, but not yet ratified the CoE Convention on Protection of Children against Sexual

²⁷ Within the framework of the Istanbul Convention, persons made vulnerable by particular circumstances include: pregnant women and women with young children, persons with disabilities, including those with mental or cognitive impairments, persons living in rural or remote areas, substance abusers, prostitutes, persons of national or ethnic minority background, migrants – including undocumented migrants and refugees, gay men, lesbian women, bisexual and transgender persons as well as HIV-positive persons, homeless persons, children and the elderly (see par 87 of the Explanatory Report to the Istanbul Convention).

²⁸ The protected grounds listed under Article 1 of the Draft Law on Georgia on Elimination of All Forms of Discrimination are: “race, color, language, national, ethnic or social belonging, sex, sexual orientation or gender identity, pregnancy or maternity, marital or health status, disability, age, nationality, origin, place of birth, place of residence, internal displacement, material or social status, religion or belief, political or any other ground.”

²⁹ See e.g. the Reports of the Representative of the Secretary-General on the human rights of internally displaced persons for Georgia available at <http://www.ohchr.org/EN/Issues/IDPersons/Pages/Visits.aspx> and the Concluding observations of the Committee on the Elimination of Racial Discrimination on Georgia dated 20 September 2011, par 20.

³⁰ See par 118 of the Explanatory Report to the Istanbul Convention.

³¹ See par 63 of CRC Committee General Comment No. 13 on the right of the child to freedom from all forms of violence (2011).

Exploitation and Sexual Abuse³² (hereinafter “the Lanzarote Convention”). This Convention requires additional awareness-raising activities on sexual exploitation and sexual abuse of children for persons having regular contacts with children and the general public (Articles 5 and 8). Other aspects of the Lanzarote Convention which will need to be implemented into national legislation include the participation of children in state policies and programmes in this field (Article 9), specific data collection and special additional assistance and protection measures (Articles 14 and 31).

30. As regards persons with disabilities, it is noted that Georgia has signed, but not yet ratified, the UN Convention on the Rights of Persons with Disabilities (hereinafter “CRPD”)³³ and its Protocol. To prepare for ratification, it may be advisable to introduce certain specific and adequate measures to protect persons with disabilities from acts of domestic violence, given that these persons are particularly vulnerable to violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.³⁴ Programmes should be put in place to ensure their access to justice and protection measures. Also, legal, social and medical services should be designed and implemented in a manner that ensures inclusion and accessibility also for women and girls with disabilities, while duly respecting each person’s autonomy, will and preferences, in compliance with Article 3 of the CRPD (see also par 105 *infra*).

3. Protection and Support

3.1. Identification of Victims

31. The new par 5 of Article 9 of the Law provides for the introduction of special provisions governing the identification of victims of domestic violence and the obligation to refer the case to “relevant bodies for response”. First, it is unclear which “bodies” this provision is referring to. This could be the police, the prosecutor, a specialized court or the “group working under the interagency council on the elimination of domestic violence defining the status of a victim of domestic violence”. It is recommended to clarify this point in the new par 5 of Article 9 of the Law.
32. Second, the provision seems to imply that the obligation to refer the case applies in *all* cases of domestic violence, whether the victim is an adult, a child or an incapacitated person. However, adult victims of violence should still have the right to determine their own course of action. It would thus be important to distinguish between the obligation to report cases of domestic violence against children³⁵ or incapacitated

³² CoE Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, Council of Europe Committee of Ministers (CETS No. 201) (hereinafter “the Lanzarote Convention”) which entered into force on 1 July 2010. Georgia signed this Convention on 12 March 2009 but has not yet ratified it.

³³ United Nations Convention on the Rights of Persons with Disabilities (hereinafter “the CRPD”), adopted by General Assembly resolution 61/106 on 13 December 2006. Georgia signed this Convention and its Protocol on 10 July 2009.

³⁴ See the Thematic Study on the Issue of Violence Against Woman and Girls and Disability, Report of the Office of the UN High Commissioner for Human Rights, 30 March 2012, available at <http://www.ohchr.org/Documents/Issues/Disability/ThematicStudyViolenceAgainstWomenGirls.pdf>.

³⁵ *Op. cit.* footnote 31, par 49 which states that “the reporting of instances, suspicion or risk of violence should, at a minimum, be required by professionals working directly with children. When reports are made in good faith, processes must be in place to ensure the protection of the professional making the report.”

- persons (in both of these cases it should be mandatory), and reporting requirements in cases involving adult victims, which should depend on the consent of the victim.³⁶
33. In addition, it is acknowledged that child victims may already be considered victims of domestic violence when witnessing violent acts against others, given the traumatizing effects of witnessing, but not being able to prevent or end such violence. It would be advisable to include a provision expressly stating this, either in the new par 5 of Article 9 of the Law or in the new Article 14¹ on the detection of incidents of domestic violence against a minor (child).
34. Furthermore, the new par 5 of Article 9 of the Law should be read together with the proposed amendment to the Criminal Code clarifying the applicable criminal sanctions in cases where crimes are not reported (see also par 55 *infra*). Draft Amendments to the Criminal Code introduce an explanatory note under Article 376 of the Criminal Code on “Non-Reporting of Crime”, whereby certain persons are exempted from criminal liability. These include “the member of the ‘group identifying the status of a victim of domestic violence under the interagency council for implementation of the measures envisaged by the Georgian Law on Elimination, Protection of and Support to Victims of Domestic Violence’, the person in charge of the shelter for victims of domestic violence and crisis centre (except in cases involving crimes against minors), and free hotline operators providing consultations to victims of domestic violence.”
35. Consequently, this implies that the medical, educational and childcare institutions, social service agencies, and the authorized employees of tutorship and guardianship establishments, who are all involved in the referral mechanism, may be held criminally liable for not reporting domestic violence cases, whether they involve adults, children or incapacitated persons – since most cases of domestic violence qualify as a criminal offence. This may contradict other provisions introduced by the Draft Amendments, such as the new Article 172⁶ of the Code on Administrative Offences of Georgia, which provides for the administrative liability of these professionals. Generally, criminal liability for these categories of professionals should only be considered if they knew, or should have reasonably known, all the facts of the case, including the potential danger for the victim, and still did not report it. With the exception of such serious cases, the new par 5 of Article 9 of the Law should specify that the failure to report is subject to administrative liability. On this basis, consideration may be given to broadening the scope of the exemption from criminal liability in Article 376 of the Criminal Code to also include these categories of professionals (except in the cases of gross negligence outlined above).
36. Additionally, as mentioned in par 32 *supra*, the above categories of professionals should not be held administratively liable in cases where an adult victim did not consent to their reporting the domestic violence case. The new Article 172⁶ of the Code on Administrative Offences should exempt from administrative liability in such a situation (see also par 55 *infra*).

3.2. Assistance to Victims

37. The new Article 16³ of the Law introduces a duty to inform the victim about available social and legal protection services, the progress of the investigation and judicial

³⁶ See par 148 of the Explanatory Report to the Istanbul Convention and Section 3.10.6. of the 2012 UN Women Handbook for Legislation on VAW.

proceedings, as well as the release of the perpetrator, which is very welcome. Additionally, the Draft Amendments should explicitly foresee that interpretation services are provided to the victims, as needed, in order to ensure full access to justice and avoid secondary victimization.³⁷

38. It is also welcome that the new Article 19¹ of the Law introduces a free nation-wide 24-hour telephone helpline, in accordance with Article 24 of the Istanbul Convention. In order for such a service to be functional, sufficient funding shall be allocated to ensure that the service will have the human, financial, material and technical capacity to provide support and crisis counselling. The same applies for the shelters, which should be set up in sufficient numbers,³⁸ to provide appropriate temporary accommodation for all victims.
39. The new Article 26 par 2 of the Law on Legal Aid provides for “free defence and assistance for the protection of victims of domestic violence as prescribed by the Administrative Procedure Code of Georgia”. This implies that victims of domestic violence will receive legal assistance and free legal aid in administrative proceedings relating to the issuance of restrictive and protective orders. Though not mentioned specifically, it is assumed that the legislation already provides for legal assistance for cases brought before criminal courts.
40. Finally, Article 16² par 1 sub-par f) of the Law refers to “free legal consultation” for persons staying in the shelter/crisis center. To ensure consistency with the Law on Legal Aid, this provision should be amended to specify that all victims shall be entitled to receive free legal consultation, irrespective of where they stay.

3.3. Migration, Asylum and Residence Permits

41. The proposed amendment to the Law on Refugee and Humanitarian Status refers to “sexual orientation” and “gender identity”, and thus explicitly states that a well-founded fear of persecution on the basis of sexual orientation or gender identity is accepted as a ground for granting refugee status. This is in line with the interpretation of the refugee definition stated in UN High Commissioner for Refugees (hereinafter “the UNHCR”) Guidelines on International Protection No. 9 on the determination of refugee status of individuals on the basis of their sexual orientation and/or gender identity.³⁹
42. However, unless this is due to a translation error, the proposed amendment implies that these grounds are cumulative, whereas “sexual orientation” and “gender identity” refer to two distinct concepts. “Sexual orientation” refers to “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate relations

³⁷ See Article 56 par 1 sub-par h) of the Istanbul Convention and par 286 of the Explanatory Report to the Istanbul Convention.

³⁸ i.e. one family place per 10 000 head of population. See par 135 of the Explanatory Report to the Istanbul Convention and Section 3.6.1. of the 2012 UN Women Handbook for Legislation on VAW.

³⁹ Guidelines on International Protection No. 9 on Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012, available at <http://www.unhcr.org/50ae466f9.pdf>. See also the Yogyakarta Principles - Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, adopted in March 2007, available at: <http://www.unhcr.org/refworld/docid/48244e602.html>, and par 313 of the Explanatory Report to the Istanbul Convention.

with individuals of a different gender or the same gender or more than one gender”.⁴⁰ “Gender identity” refers to “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech and mannerisms”.⁴¹ To be in line with international standards, it is recommended to specify the alternative (and not necessarily cumulative) nature of these grounds by stating “sexual orientation *and/or* gender identity”.

43. Article 60 of the Istanbul Convention deals with gender-based asylum claims. It requires State Parties to take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of the 1951 Convention relating to the Status of Refugees. In addition, a gender-sensitive interpretation should be given to each of the Convention grounds. Moreover, gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection, should be put in place.
44. To ensure this, States have generally taken two types of approaches. Some States have incorporated legal interpretative guidance and/or procedural safeguards within the legislation itself, while others have preferred to develop similar guidelines for decision-makers. If such legal provisions, guidelines or other tools do not already exist, it is recommended for stakeholders in Georgia to discuss and decide whether to include them in the Draft Amendments or whether to expressly provide for the development of guidelines. When drafting these guidelines, the set of recommendations included in the UNHCR Guidelines on Gender-Related Prosecution could provide useful guidance.⁴²
45. Article 16² par 5 of the Law provides that “the victim of domestic violence may not be repatriated on the assumption that the person’s security will not be protected and guaranteed upon return”. This is in line with the case law of the ECtHR, which provides that deportation shall be prohibited where a state would expose an individual to a real risk of loss of life under Article 2 of the ECHR or to torture or inhuman or degrading treatment or punishment under Article 3 of the ECHR.⁴³ Particularly, the ECtHR has held that victims of domestic violence may fall within the group of ‘vulnerable individuals’, along with children, and are thus entitled to special state protection.
46. The new Article 19 par 1 sub-par i) of the Law on the Legal Status of Foreigners and Stateless Persons provides for temporary residence permits for no more than six years to foreign victims of domestic violence in accordance with the Law, but allows for an

⁴⁰ *ibid*, par 8.

⁴¹ *ibid*.

⁴² See par 36 of the Guidelines on International Protection No. 1 on Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 7 May 2002, available at <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/unhcr-guidelines-on-gender-related-persecution-2002.html>.

⁴³ See e.g. *N v. Sweden*, ECtHR judgment of 20 October 2010 (Application no. 23505/09) where the ECtHR, while noting that there was no specific circumstances in the present case substantiating that the applicant will be subjected to various forms of violence by family members and/or the Afghan society, recognized the cumulative reprisals risk indicated by statistic and international reports and held the deportation of the claimant to Afghanistan to be in violation of Article 3 of the ECHR.

extension under the same criteria. This is generally in line with pars 1 and 3 of Article 59 of the Istanbul Convention. However, the new Article 16² par 1 (i) of the Law states that the victim shall address the “competent state body” to get a temporary residence permit, while par 4 of this provision states that “the institutions providing victim services or the body processing a case” shall apply for such a residence permit. It is recommended to clarify this point in the relevant provisions.

47. The new sub-par d² of par 3 of Article 58 of the Law on the Legal Status of Foreigners and Stateless Persons provides that “a foreigner who is a victim of domestic violence until completion of relevant proceedings or/and during the period of temporary stay in a shelter in compliance with the [Law]” shall not be expelled from Georgia. Presumably, this corresponds to the protective measures provided under Article 59 par 2 of the Istanbul Convention, whereby expulsion proceedings against victims of domestic violence (where their residence status is connected to that of the sponsor spouse or partner who is the perpetrator of domestic violence) are suspended to allow them to apply for residence status on humanitarian grounds. This new provision should be clarified, and should also specify that protection from expulsion is not conditional upon temporary stay in a shelter, especially considering the limited number of available shelters in the country.⁴⁴
48. In order to be fully in line with Article 59 of the Istanbul Convention, Article 19 of the Law on Legal Status of Foreigners and Stateless Persons shall be supplemented to provide for the re-issuance of temporary residence permits for foreign victims of forced marriage, who were brought to another country for the purpose of such marriage and who, as a result, lost their residence status in Georgia.

3.4. Confidentiality, Privacy and Data Protection

49. Article 19 of the Law provides that “[t]he information on state of physical and psychological status of the victim shall be confidential and its disclosure shall be permitted only in cases provided by law”. It would be advisable to specify in which situations such disclosure is permitted (e.g. in cases of mandatory reporting) or to include references to applicable legislation, e.g. the Law on Medical Activity, which, where there is a danger of impending or repeated acts of domestic violence, allows for disclosure, if this aims at the protection of patients’ rights and interests.
50. In cases of child victims of domestic violence, it should be made explicit that the duty to report for certain professional categories (e.g. doctors, social workers, and teachers) should supersede any obligation of confidentiality.⁴⁵
51. At the same time, child victims and witnesses, who are of a suitable age to testify, should have their privacy protected as a matter of primary importance. Information related to a child’s involvement in the justice process should be protected,⁴⁶ e.g.

⁴⁴ Only two state shelters in Georgia, see page 18 of the Combined fourth and fifth periodic reports of Georgia to the Committee on the Elimination of All Forms of Discriminations against Women, 30 October 2012, available at http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-GEO-4-5_en.pdf.

⁴⁵ See Article 3 par 3 of the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime (2009) available at http://www.unicef.org/ceecis/UNDOC-UNICEF_Model_Law_on_Children.pdf.

⁴⁶ See pars 26-28 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Economic and Social Council resolution 2005/20, Annex, available at https://www.un.org/en/pseataaskforce/docs/guidelines_on_justice_in_matters_involving_child_victims_and.pdf.

through maintaining confidentiality and restricting disclosure of information that could lead to the identification of a child who is a victim or witness. Measures should also be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony where permitted by national law, and anonymizing the child's personal data in documents and records. If not already provided in relevant procedural legislation, it would be advisable to supplement the Draft Amendments accordingly.

52. To ensure that the respective bodies adhere to the principle of absolute confidentiality, a correlative provision may be added under Article 19 of the Law, specifying that a violation of the confidentiality rule could lead to criminal, civil, administrative or disciplinary liability. It is advisable to supplement the Draft Amendments to the Law accordingly.

3.5. Administrative Liability of the State Authorities and Other Government Bodies for Failure to Report or to Act

53. As regards the protection of children, while the current Law already contains a Chapter IV on Specific Measures for Protection of a Minor from Domestic Violence, the Draft Amendments aim to supplement this Chapter by adding special provisions on the "detection of an incident of domestic violence against a minor" (the new Article 14¹), which is a welcome step.
54. The new provisions provide that "[t]he obligation of revealing the fact (the primary identification) of domestic violence against a minor (child) and addressing relevant bodies for response lies on medical, educational and childcare institutions, social service agency, and authorized employees of tutorship and guardianship establishments as well as other relevant institutions and their authorized employees involved in children's protection referral procedures envisaged by legislation." While there is a clear focus on children's vulnerability to domestic violence, the draft amendment does not clearly identify the "relevant bodies for response" (the law enforcement bodies, prosecution services, tutorship and guardianship authorities, special courts or social services or others), to which such reporting must be made and should be clarified accordingly.
55. The new Article 14¹ par 2 of the Law refers to liability in case these bodies fail to comply with their obligation to report. While this change is laudable in principle, and in line with international standards,⁴⁷ the new provision does not specify the type of liability, namely whether it shall be disciplinary, administrative or criminal. Article 172⁶ of the Code of Administrative Offences of Georgia, which introduces a new administrative offence in case of failure to provide information about revealing violent action and child abuse, seems to imply that the failure to report will trigger administrative liability. Read together with the new Article 14¹ of the Law on the detection of incidents of domestic violence against a child, such an administrative offence would apply to medical, educational and childcare institutions, the social service agency and authorized employees of tutorship and guardianship establishments

⁴⁷ See par 55 of CRC Committee General Comment No. 13 on the right of the child to freedom from all forms of violence (2011). In order to ensure proper reporting, the CRC Committee recommends that disciplinary or administrative proceedings against professionals for neglectful or inappropriate behaviour in dealing with suspected cases of child maltreatment (either internal proceedings in the context of professional bodies for breaches of codes of ethics or standards of care, or external proceedings) be in place.

as well as to other institutions participating in child protection referral mechanisms. As mentioned in pars 35-36 *supra*, the nature of the liability of these bodies should be clarified so as not to contradict Article 376 of the Criminal Code on non-reporting of a crime (and its explanatory note), ideally by including in the new Article 14¹ of the Law (as well as in the new sub-paragraph 2¹ of Article 1998¹ of the Civil Code, which deals with the same issue), a cross-reference to the applicable legislation, i.e. the Code of Administrative Offences.

56. In addition, it is important to ensure the right of children to express their views in every decision that affects them, as stated in Article 12 of the CRC. The fact that a child is very young or in a particularly vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor should it reduce the weight given to a child's views in determining his or her best interests.⁴⁸ Therefore, it is advisable to supplement the new Article 14¹ of the Law by specifying that the various bodies involved in the detection of domestic violence committed against a child shall inform the child about the process and seek his/her views regarding the way forward.
57. States shall also develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, which directly affect a child.⁴⁹ Thus, any decision concerning a child must be motivated, justified and explained, stating explicitly all factual circumstances, elements relevant for the best-interests assessment, and how these elements have been weighted to determine the child's best interests.⁵⁰ The new Article 14¹ of the Law should be amended accordingly.
58. Finally, the Draft Amendments do not address the failure of certain public officials, e.g. the police or prosecutor services, to investigate and prosecute acts of domestic violence, and the procedure to hold them accountable.⁵¹ Articles 5 and 29 of the Istanbul Convention expressly reiterate the principle of liability of state authorities, who are under the obligation to diligently prevent, investigate and punish acts of violence.⁵² It is recommended to introduce provisions specifying the type of liability that these public officials will be under (disciplinary, administrative or criminal), and to accompany them with proper training of police and prosecutors, and adequate human and financial resources.

4. Investigation, Prosecution, Procedural Law and Protective Measures

4.1. Liability of the Perpetrator

59. In 2012, the Criminal Code was amended to introduce a specific criminal offence of "domestic violence" (new Article 11¹), which addressed one of the concerns raised by

⁴⁸ See par 54 of the General Comment General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), available at http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf.

⁴⁹ *ibid.* par 87.

⁵⁰ *ibid.* pars 97-98.

⁵¹ See par 73 of the Report of the Special Rapporteur on violence against women, its causes and consequences, 14 May 2013, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A_HRC_23_49_English.pdf.

⁵² See par 162 of the Explanatory Report to the Istanbul Convention.

the UN Committee on Economic, Social and Cultural Rights in 2003.⁵³ It is worth highlighting that the provision does not introduce separate criminal offences or aggravated penalties, but makes cross-references to the respective provisions of the Criminal Code and related applicable sanctions.

60. It must be pointed out in this context that practice varies greatly in different countries with regard to the choices made by policy and law makers between using existing general criminal laws without imposing higher penalties, using general criminal laws but considering violence in the domestic context as an aggravating factor (leading to higher penalties), or introducing into the penal code a specific offence criminalising domestic violence.⁵⁴
61. The introduction of a criminal offence of domestic violence into the Georgian Criminal Code is generally positive as it highlights that certain violent acts are subject to criminal liability, even if the said behaviour occurs in a domestic setting. However, unless this new provision is accompanied by harsher penalties, it is unlikely to send a clear message that acts of domestic violence constitute serious criminal offences⁵⁵ and that domestic abuse in Georgia will not be tolerated.
62. To enhance its effectiveness, such a provision should also be accompanied by proper guidelines and training on data collection, to ensure that data is collected in relation to the specific criminal provision on domestic violence, but also to the cross-referenced articles. In this way, data would be collected in reference to the typology of domestic violence acts, and not only on one criminal offence of “domestic violence” (see also comments on data collection in pars 24-26 *supra*).
63. Article 46 of the Istanbul Convention provides that State Parties shall take the necessary legislative or other measures to ensure that certain circumstances shall be considered aggravating circumstances in the determination of the sentence, insofar as they do not already form part of the constituent elements of the offence.⁵⁶ This particularly includes the situation where “the offence was committed against a former

⁵³ See par 18 of the Concluding observations of the UN Committee on Economic, Social and Cultural Rights on the 2nd periodic report submitted by Georgia (2003) available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F1%2fAdd.83&Lang=en.

⁵⁴ See Section 1.3.3. on page 22 of the European Institute on Gender Equality on the Review of the Implementation of the Beijing Platform for Action in the EU Member States: Violence against Women Victim Support (2012), available at <http://eige.europa.eu/sites/default/files/Violence-against-Women-Victim-Support-Report.pdf>.

⁵⁵ See Recommendation No. 9 from the UN Women Virtual Knowledge Centre to End Violence Against Women and Girls, available at <http://www.endvawnow.org/en/articles/445-criminal-sanctions-and-sentencing-provisions-.html> which states that “[l]egislation should specify that penalties for crimes involving domestic violence should be more severe than similar non-domestic violence-related crimes. This sends the important message that the state will treat a domestic violence crime as seriously, if not more seriously, than a crime against a stranger”.

⁵⁶ These includes: a) the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority; b) the offence, or related offences, were committed repeatedly; c) the offence was committed against a person made vulnerable by particular circumstances; d) the offence was committed against or in the presence of a child; e) the offence was committed by two or more people acting together; f) the offence was preceded or accompanied by extreme levels of violence; g) the offence was committed with the use or threat of a weapon; h) the offence resulted in severe physical or psychological harm for the victim; i) the perpetrator had previously been convicted of offences of a similar nature.

- or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority”.
64. In the Georgian Criminal Code, existing aggravating circumstances for certain criminal offences (e.g. when the victim is under fourteen years old, is a pregnant woman or a dependent person) could already qualify as “domestic violence” with aggravating circumstances if the perpetrator is a “family member”.⁵⁷ However, the other circumstances listed in the Istanbul Convention (see par 63 *supra*), have so far not been systematically considered as constituting aggravating circumstances.
65. In order to demonstrate the State’s “zero tolerance” attitude towards domestic violence offences, it is thus recommended to amend the Criminal Code to state that the existence of a domestic relationship between a perpetrator and a victim will be systematically considered as an aggravating circumstance in the criminal provisions listed under the amended Article 11¹ of the Criminal Code (unless this fact already forms part of the constituent elements of the offence). If such a recommendation is followed, the reference to Article 108 (premeditated murder) should be removed from this provision, since the relationship between the perpetrator and the victim will be stated as an aggravating circumstance under Article 109 (premeditated murder under aggravating circumstance) for the same crime.
66. It must be noted that Article 126 of the Criminal Code, as amended by the Draft Amendments, introduces the aggravating circumstance of committing an act of torture “in the presence of a minor, against his/her family member”. This acknowledges the grave impact that acts of domestic violence have on children witnessing them, even if they are not direct victims. Article 46 par d of the Istanbul Convention reflects this by systematically considering acts of domestic violence committed in the presence of a child as aggravated crimes. This, along with other aggravating circumstances listed under this Convention shall be included in the relevant criminal offences, where not already the case.
67. In addition, as regards the criminal offences cross-referenced in the amended Article 11¹ of the Criminal Code, it is unclear why certain other articles of the Criminal Code are not mentioned, e.g. Article 116 (murder by negligence) since domestic violence may also encompass recklessness, negligence or omission;⁵⁸ Article 119 (damage to health resulting in death); Article 122 (serious or less serious damage to health beyond limits of necessary defence); Article 124 (less serious damage to health through negligence); Article 138 (sexual abuse under violence); Article 139 (coercion into sexual intercourse or other action of sexual character) and Article 140 (sexual intercourse or other action of sexual character with one under sixteen). Consideration should be given to broadening the scope of the amended Article 11¹ of the Criminal Code to also include cross-references to these articles.
68. In relation to the term “economic violence”, it is noted that the term is not defined by key international instruments or documents. Given the specificity of such behaviour, consideration may be given to introducing a separate paragraph under the amended

⁵⁷ E.g. murder against a minor under 14 or a pregnant woman (Article 115.2.2), driving a person to suicide when under financial or other dependency or committed in respect of a minor (Article 120), rape of a minor or of a minor under 14 (Article 152), sexual intercourse with a sexually immature person (Article 155); debauchery of minors where committed by a parent or other person under a duty to take care of them (Article 156), etc.

⁵⁸ See section 3.4.2.1. of the 2012 UN Women Handbook for Legislation on VAW.

Article 11¹ of the Criminal Code on the specific offence of “economic violence”. Examples from other countries may be useful in that respect to define the constitutive elements. This could encompass for example the deprivation of housing, food, clothing and other property or funds; the intentional destruction of or damage to another’s property, movable or immovable assets or personal documents, or the threat thereof.⁵⁹ At a minimum, the amended Article 11¹ of the Criminal Code could include a cross-reference to Article 168 of the Criminal Code (encroachment upon freedom of work) to reflect the situation of a spouse forbidding the other to work, as well as to Article 181 (extortion) and Article 182 (misappropriation or embezzlement), all of which can occur in a domestic context.⁶⁰

69. The amended Article 137 of the Criminal Code defines rape as “sexual intercourse or other kind of sexual relation carried out by any part of the body or an object, which is committed by violence, threat of violence or abusing the helplessness of the victim”. It is welcome that the amended provision makes it clear that the conduct can be carried out with any bodily part or object, as stated under Article 36 par 1 of the Istanbul Convention.
70. It is worth mentioning that, while Georgia has on several occasions explained that spousal rape is covered by the general criminal provision on rape and is treated the same way, the Committee on the Elimination of Discrimination against Women⁶¹ has recommended that Georgia specifically address the problem of spousal rape in its legislation. This would send a clear signal that spousal rape is not a private matter and would be in line with international good practices on legislation on domestic violence.⁶² Therefore, Article 137 of the Criminal Code should be amended to expressly state that the provision applies “irrespective of the nature of the relationship between the perpetrator and the complainant, including between family members”. Reference should also be made to the definition of “family members” provided in the explanatory note to the amended Article 11¹ of the Criminal Code. The same should apply more generally to other criminal offences of sexual violence, to demonstrate that all such acts are criminalised and prosecuted, particularly when committed against a current or former spouse or partner, or by other family members.⁶³
71. While the above amendments are welcome, it is noted that a number of acts of domestic violence, which should be criminalized according to the Istanbul Convention, are not covered by the current version of the Criminal Code. These include:
- “Psychological violence”: Article 33 of the Istanbul Convention states that psychological violence, namely the “intentional conduct of seriously impairing a

⁵⁹ See, however, section 3.4.2.1. of the 2009 UN Handbook for Legislation on VAW. See also various definitions of “economic violence” or “economic abuse” at <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html>.

⁶⁰ See various definitions of “economic violence” or “economic abuse” at <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html>.

⁶¹ See pars 19-20 of the Concluding Comments of the Committee on the Elimination of Discrimination against Women on combined second and third periodic report submitted by Georgia (2006) available at <http://www.un.org/womenwatch/daw/cedaw/cedaw36/cc/Georgia/0647834E.pdf>.

⁶² See Section 3.4.3.1. of the 2012 UN Women Handbook for Legislation on VAW. See also e.g. Article 222-22 of the French Criminal Code which provides that rape and other acts of sexual violence constitute criminal offences “regardless of the nature of the existing relationship between the aggressor and its victim, including when they are related by marriage”.

⁶³ See par 194 of the Explanatory Report to the Istanbul Convention.

person's psychological integrity through coercion or threats" should be criminalized (though State Parties may reserve the right to provide for non-criminal sanctions (Article 78 par 3)). While some aspects of this may partially be covered by existing criminal provisions, e.g. Article 115 (bringing to the point of suicide), introducing a criminal offence for "psychological violence" into the Criminal Code via an amended Article 11¹ should be considered.⁶⁴

- "Stalking": Article 34 of the Istanbul Convention defines "stalking" as the "intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety" and states that such behaviour should be criminalized, unless a State Party makes a reservation in that respect. While such offence may be partially covered by Article 151 of the Criminal Code (threatening), this provision does not necessarily capture the criminal nature of a pattern of behaviour, individual elements of which, if taken by themselves, may not always amount to criminal conduct.⁶⁵ It is therefore recommended to introduce stalking as a criminal offence.
- "Causing the victim to engage in non-consensual acts of a sexual nature with a third person": Article 36 sub-par c of the Istanbul Convention provides that the intentional conduct of causing another person to engage in non-consensual acts of a sexual nature with a third person shall be criminalized. This provision covers situations where the perpetrator does not perform the sexual act, but rather causes the victim to engage in sexual activity with a third person.⁶⁶ As it stands, Article 139 of the Criminal Code covers "coercion into sexual intercourse or other action of sexual character", but not with a third person. It is recommended to broaden the scope of Article 139 of the Criminal Code accordingly.
- "Intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage": Article 37 par 2 of the Istanbul Convention provides for the criminalization of such conduct. While it is positive that the Draft Amendments to the Criminal Code and particularly the new Article 150¹ include a new criminal offence for forced marriage, this does not cover cases where the victims were lured to another country for marriage against their will. The new Article 150¹ of the Criminal Code should thus be supplemented accordingly.⁶⁷ In this context, it is noted positively that Article 1144 of the Civil Code allows a

⁶⁴ See pars 21-32 of the Report on Psychological Violence by the Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe (2011), available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12971&Language=EN>, which defines 'psychological violence' as "reiterated words and acts aimed at or having the consequence of causing harm or putting the victim in a position of subjugation", which can take a wide range of forms outlined in the report; Article 33 of the Istanbul Convention defines 'psychological violence' as the "intentional conduct of seriously impairing a person's psychological integrity through coercion or threats". For specific provisions on the criminalization of psychological violence in OSCE participating States, see e.g. Article 222-33-2-1 of the French Penal Code which states that harassing one's spouse, partner, or co-habitant by repeated acts that "degrade one's quality of life and cause a change in one's physical or mental state of health" is punishable by a maximum penalty of three years in prison and a €45,000 fine, if such harassment resulted in an incapacity to work for eight days or less (five years and a fine of €75,000 if the resulting incapacity to work is over eight days).

⁶⁵ See par 185 of the Explanatory Report to the Istanbul Convention.

⁶⁶ See par 190 of the Explanatory Report to the Istanbul Convention.

⁶⁷ See par 197 of the Explanatory Report to the Istanbul Convention.

spouse to challenge his/her marriage before a court when forced to enter into marriage, in line with Article 32 of the Istanbul Convention. It is important to point out that such legal action should not impose an undue financial and administrative burden on the victim challenging the marriage in court.⁶⁸

72. Furthermore, Article 41 of the Istanbul Convention establishes additional offences (not necessarily criminal) relating to aiding or abetting and attempting the commission of certain acts.⁶⁹ According to Articles 18 on the “preparation of crime”, criminal liability for aiding or abetting the commission of certain acts shall be expressly stated in the individual criminal provisions on these acts. A similar provision exists for “attempted crime” in Article 19 of the Criminal Code. Consequently, stakeholders are urged to consider introducing references to Articles 18 and/or 19 under the respective provisions of the Criminal Code on domestic violence offences. Alternatively, civil or administrative liability should be considered, if not already the case.
73. It should be noted that ratification of the Istanbul Convention also requires the criminalization of certain acts of violence against women, which are not currently dealt with in the Criminal Code. These include “forced abortion and forced sterilisation” (Article 39 of the Istanbul Convention) and “female genital mutilation” (Article 38 of the Istanbul Convention).⁷⁰ While these do not specifically relate to domestic violence, it is nevertheless recommended to supplement the Criminal Code to introduce these criminal offences.
74. Finally, while also not exclusively within the scope of domestic violence, it is worth mentioning that Article 40 of the Istanbul Convention provides that “sexual harassment” shall be subject to criminal or “other” legal sanction. In that respect, OSCE/ODIHR would like to reiterate some of the main recommendations of the OSCE/ODIHR Opinion on the draft Law on the Elimination of All Forms of Discrimination of Georgia⁷¹ regarding liability for commission of acts of “sexual harassment”. While certain acts amounting to sexual harassment may be partially covered by criminal offences currently in the Criminal Code, the criminal liability of perpetrators of acts of sexual harassment of a particular gravity should be clearly delineated and laid down in an article or chapter of the Criminal Code. Though practice varies across the OSCE area, such conduct is generally considered as discriminatory behavior and often accompanied by provisions on harassment as criminal misdemeanour or subject to civil or administrative penalties.⁷² Also,

⁶⁸ See par 178 of the Explanatory Report to the Istanbul Convention.

⁶⁹ Article 41 par 1 of the Istanbul Convention requires Parties to the Convention to establish as offences aiding or abetting the commission of any of the following offences: psychological violence (Article 33), stalking (Article 34), physical violence (Article 35), sexual violence, including rape (Article 36), forced marriage (Article 37), female genital mutilation (Article 38.a), and forced abortion and forced sterilisation (Article 39). Article 41 par 2 of the Istanbul Convention requires parties to establish as an offence the attempt to commit the following offences only: serious cases of physical violence (Article 35), sexual violence including rape (Article 36), forced marriage (Article 37), female genital mutilation (Article 38.a), and forced abortion and forced sterilisation (Article 39).

⁷⁰ See also the United Nations General Assembly Resolution A/RES/67/146 adopted on 20 December 2012 and urging States to prohibit female genital mutilations.

⁷¹ See pars 34-37 of the OSCE/ODIHR Opinion on the Law on Prohibition of Discrimination in Montenegro, NDISCR-GEO/238/2013 (AIC), issued on 18 October 2013, available at http://legislationline.org/download/action/download/id/4909/file/238_NDISCR_GEO_18%20Oct%202013_en.pdf.

⁷² See e.g. the definition of “sexual harassment” in Article 2 of EU Gender Equality Directives (“any form of unwanted verbal, non-verbal or physical conduct of a sexual nature [which] occurs, with the purpose or

provisions protecting the victims of sexual harassment from reprisals when they submit a claim should be introduced.

75. Finally, rules governing the jurisdictional competence of courts will also need to be reviewed to ensure that they are fully in line with Article 44 of the Istanbul Convention. Particularly, they should allow the investigation and prosecution of domestic violence acts committed abroad by nationals or persons having their habitual residence in Georgia, even if the offence is not criminalized in the other country.

4.2. Liability for Acts of Domestic Violence Committed Against Children

76. Proposed amendments to the Civil Code introduce a new provision under Article 1198 stating that “it is inadmissible to use the methods of upbringing of a minor by a parent that shall cause physical or psychological pain to a minor”. Additionally, proposed amendments to Article 172 of the Code of Administrative Offences of Georgia introduces new administrative offences for parents who fail to fulfil the obligations of upbringing and educating underage children (i.e. for not providing housing, food and other conditions for their health and growth; and in case of illegal purchase of narcotic drugs in small quantities by a minor).
77. Additionally, one of the concerns raised by the European Committee of Social Rights in 2012 was that the Georgian legal framework does not clearly prohibit corporal punishment of children in the home, and was thus not in conformity with the European Social Charter.⁷³ In addition, the Committee on the Rights of the Child recommended in 2008 to Georgia to “adopt legislation explicitly prohibiting all forms of corporal punishment of children in all settings, including the home”.⁷⁴ It is worth mentioning that as of 2012, twenty -three CoE Member States have introduced complete bans on corporal punishment of children in their legislation.⁷⁵
78. As they stand, the Draft Amendments to the Civil Code, the Code of Administrative Offences, and the Law do not introduce an express ban on all forms of corporal punishment of children, however light, committed in a domestic setting, by parents or by other family members. Therefore, to be in line with regional and international standards in that respect,⁷⁶ it is advisable to make it clear in the Draft Amendments

effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”) and in par 18 of General Recommendation No. 19 of CEDAW Committee (1992) (“such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions”). See also the definitions of “sexual harassment” in criminal legislation of EU Countries in Section 2.1.8. of the Report on Harassment related to Sex and Sexual Harassment Law in 33 European Countries prepared by the Members of the European Network of Legal Experts in the Field of Gender Equality (2012), available at http://ec.europa.eu/justice/gender-equality/files/your_rights/final_harassment_en.pdf.

⁷³ See page 15 of the Conclusions of the European Committee of Social Rights (January 2012) for Georgia, available at http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Georgia2011_en.pdf. Georgia ratified the revised version of the European Social Charter on 22 August 2005.

⁷⁴ See pars 31-32 of the Committee on the Rights of the Child Concluding Observations on the 3rd Report submitted by Georgia, dated 23 June 2008.

⁷⁵ See page 18 of the Final report of the European Conference “Stepping up progress in combating violence against children”, which took place in Ankara on 27-28 November 2012, organised by the Council of Europe, UNICEF Turkey and the Government of Turkey, in collaboration with the United Nations Special Representative of the Secretary-General (SRSG) on Violence against Children. http://www.coe.int/t/dg3/children/Source/RapportAnkara_en.pdf.

⁷⁶ See pars 2, 16 and 34 of the Committee on the Rights of the Child General Comment No. 8 (2006) on the right to protection from corporal punishment and other cruel or degrading forms of punishment which

- that such acts are prohibited. As recommended in General Comment No. 8 of the Committee on the Rights of the Child,⁷⁷ this can be done by explicitly stating that criminal law provisions on assault shall also cover all corporal punishment, including when committed by a family member at home, either in the civil code, family law, or in the Law.
79. It should be noted that Article 58 of the Istanbul Convention also covers the issue of extending the statute of limitation to ensure the effective initiation of legal proceedings after the victim has come of age, thereby addressing the special situation of child victims who may need time to overcome their trauma and decide to press charges. This relates to four criminal offences, i.e. sexual offence including rape (Article 36), forced marriage (Article 37), female genital mutilation (Article 38) and forced abortion and forced sterilization (Article 39).
80. Article 71 of the Criminal Code provides for the release from criminal liability due to expiration of the period of limitation, but does not address the specific situation of the child victim. It should be pointed out that practice varies greatly among OSCE participating States, but that several of them now stipulate that for certain criminal offences (e.g. rape and/or other grave sexual offences committed against a child), the limitation period for criminal proceedings should begin when the victim comes of age.⁷⁸ Consequently, stakeholders are urged to debate whether the current statute of limitations allows effective access to justice for child victims and to consider introducing special provisions, under Article 71 of the Criminal Code, or other appropriate legislation, concerning the statute of limitation in such cases. If special provisions are introduced to that effect, it should be noted that, following the judgment of the Constitutional Court of Georgia of 13 May 2009, the new extended statutory limitations, i.e. the retroactive effect of the new provisions, would only apply to conduct for which the limitation period has not yet expired.⁷⁹
81. As regards sexual offences against children, certain articles of the Criminal Code address sexual offences against “minors”, “persons under 14 years” and “persons under 16 years”. The age of the victim is at times considered as an aggravating circumstance (see e.g. Article 137 on rape of a “person under fourteen years”, Article 138 on sexual abuse under violence against “a minor” or against a “person under fourteen years”). In other provisions, it is a constituent element of the criminal offence

highlights “the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children” and that “explicit prohibition of corporal punishment and other cruel or degrading forms of punishment, in their civil or criminal legislation, is required in order to make it absolutely clear that it is as unlawful to hit or ‘smack’ or ‘spank’ a child as to do so to an adult, and that the criminal law on assault does apply equally to such violence, regardless of whether it is termed ‘discipline’ or ‘reasonable correction’.”

⁷⁷ *ibid.* par 39. See also par 11 where the Committee on the Rights of the Child defines “corporal” or “physical” punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light” and provides examples.

⁷⁸ See e.g. Article 7 of the French Criminal Procedure Code whereby the limitation period for a list of criminal acts committed against minors (including acts of sexual violence and rapes) begins when the child reaches majority.

⁷⁹ See extracts from the judgment on page 138 of the Georgia Constitutional Law Review No. II, available at http://constcourt.ge/files/Journal_EN.pdf. See also the Amicus Curia Brief of the European Commission for Democracy through Law (Venice Commission) for the Constitutional Court of Georgia on the Retroactivity of Statutes of Limitation, CDL-AD(2009)012, of 16 March 2009, adopted by the Venice Commission at its 78^h Plenary Session (13-14 March 2009) available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)012-e).

- (see e.g. Article 140 on sexual intercourse or other action of sexual character with a person under sixteen, and Article 141 on perversion (without violence) with a person under sixteen).
82. It should be noted that the above articles are not fully in compliance with the provisions of the Lanzarote Convention. This Convention's Article 18.1.b (second indent) criminalizes intentional sexual activities with children (even when they have already reached the legal age for sexual activities), where the person involved abuses a recognised position of trust, authority or influence over the child (including within the family), regardless of whether this involves coercion, force or threat.⁸⁰
83. In that respect, Articles 140 and 141 of the Criminal Code, which cover "sexual intercourse or other action of a sexual nature" and "perversion" respectively, both without violence or threat of violence, protect persons under sixteen years old. Articles 137 and 138 of the Criminal Code on rape and sexual abuse under violence respectively seem to imply that one of the constitutive elements of the offence is either violence or the threat of violence or "the helplessness" of the victim. However, there is no explanatory note clarifying the meaning of such wording, e.g. whether this refers to the age of the victims (then this would overlap with Article 141 of the Criminal Code) or to the mental or physical disability or a situation of dependence, e.g. when the perpetrator is in a recognised position of trust, authority or influence over a child. Since the criteria of "helplessness" of the victim constitutes an aggravating circumstance which may trigger the imposition of a harsher criminal penalty, it is recommended to clarify the meaning of "helplessness", in order to allow for consistent interpretation and application.
84. In light of the above, the provisions of the Criminal Code do not expressly envisage the situation where the said conduct is committed by persons who abuse a recognised position of trust, authority or influence over the child (including within the family) which should be criminalized when committed against a child, even when they have already reached the legal age for sexual activities. Therefore, it is recommended to introduce a criminal offence (accompanied with an appropriate and severe level of penalty) covering sexual intercourse or other actions of a sexual nature with a child, without the requirements of coercion, force nor threat, when committed by a person who is in a recognised position of trust, authority or influence over the child (including within the family).
85. In this context, it is also important to note that Article 18.1.b (third indent) of the Lanzarote Convention also criminalizes intentional sexual activities with a child while abusing this child's particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence.⁸¹ While as mentioned under par 83 *supra* the wording "helplessness" may apply to such a vulnerable situation, the above acts are not clearly covered by the current provisions. Unless the clarification of the word "helplessness" includes such situations as well, consideration should be given to introducing a specific and separate criminal offence.

⁸⁰ See par 124 of the Explanatory Report to the Lanzarote Convention.

⁸¹ See par 126 of the Explanatory Report to the Lanzarote Convention.

4.3. Civil Lawsuits and Remedies

86. Article 9 of the Law provides that “civil law mechanisms shall apply where the damage inflicted gives rise to obligation to compensate damages in accordance with the civil law”, which is welcome. However, the existing legal framework and draft amendments do not seem to provide for a procedure for a victim of domestic violence to seek civil remedies for damages *against State authorities* that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.⁸² It is recommended that the new Article 16² of the Law on victim’s rights and protection guarantees, and other provisions as appropriate, be supplemented to expressly afford such a possibility to the victim.
87. Article 16² pars c) and d) of the Law provides for measures to obtain compensation for damages suffered as a result of an act of domestic violence. However, these provisions do not clearly specify that par c) applies to legal action brought against the perpetrator, and it is not clear from par d) who holds the subsidiary obligation to compensate in case the perpetrator is insolvent. Also the mechanism for compensation, e.g. whether this will involve the establishment of a state fund or an already existing fund for victims of violent crimes, and applicable legislation, is unclear. It is recommended that Article 16² pars c) and d) be clarified in that respect, even if the precise modalities may be decided in secondary legislation as suggested by the wording of the new par 5¹ of Article 21 of the Law.

4.4. Procedural Measures and Protection from Re-victimization

88. It is particularly welcome that the new Article 16² par 3 of the Law introduces specific protective measures for children during the course of interrogation. However, the scope of measures to protect child victims and witnesses should be much broader and should cover not only the interrogation phase, but the whole justice process, i.e. the detection of the crime, the making of the complaint, investigation, prosecution, trial and post-trial procedures.⁸³ If such protective measures are not already included in the existing legal framework, it is recommended to amend the relevant legislation, *inter alia* the Code of Criminal Procedure, to include protective measures for children during the whole justice process, including the appointment of legal guardians.
89. As mentioned in pars 56-57 *supra*, it is important to safeguard the rights of children to express their views in every decision that affects them and that any decision made by legislators, judges or administrative authorities concerning a child must be motivated, justified and explained.⁸⁴ It would be advisable to supplement relevant procedural legislation to reflect such a requirement. Also, as recommended by the UN Committee on the Rights of the Child, these measures should be accompanied by adequate and systematic training and/or sensitisation on children’s rights of the professional groups working with and for children, including law enforcement officials, as well as judges, lawyers, health personnel, teachers, social workers, school administrators and others as required.

⁸² See par 162 of the Explanatory Report to the Istanbul Convention.

⁸³ See the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime (2009) available at http://www.unicef.org/ceecis/UNDOC-UNICEF_Model_Law_on_Children.pdf.

⁸⁴ *Op. cit.* footnote 48, pars 97-98.

90. While it is very welcome that the Draft Amendments introduce child sensitive protective measures, adult victims should also benefit from certain protective measures. Article 56 of the Istanbul Convention provides for a range of measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings. While some of them are already part of the current legal framework and Draft Amendments, other measures seem to be lacking.⁸⁵ It is recommended that the Law and the Criminal Procedure Code, and if necessary the Administrative Procedural Code, be amended as appropriate to put in place special procedures to prevent direct contact between the perpetrators and the victims at all stages of criminal investigations and in court proceedings, unless such contact is necessary or useful for the proper conduct of proceedings.⁸⁶
91. It is recommended to supplement Article 16² of the Law to also include the right of the victim of domestic violence to choose where possible the gender of the police officer doing the intake interview or of any other criminal justice official.⁸⁷
92. More generally, given the importance to ensure timely and expedited judicial proceedings, the drafters may also consider, where appropriate, introducing ‘fast-track’ procedures for cases of domestic violence.⁸⁸

4.5. Restrictive, Protective Orders and Other Protective Measures

93. It is commendable that the current legislation to prevent and combat domestic violence provides for restrictive orders, issued by the police and protective orders, issued by courts of law. While the Law does not detail the nature of the restrictions, the Administrative Procedural Code provides for a list of protective and restrictive measures as well as for the procedure of confirming police “restrictive orders” by court within 24 hours. In order to ensure clarity, it would be advisable to supplement Article 10 par 3 and Article 16 par 3 sub-par h of the Law mentioning such measures, by including cross-references to relevant provisions of the Administrative Procedural Code.
94. Paragraphs 3 and 4 of Articles 21¹⁵ of the Administrative Procedural Code provide for a wide range of possible restrictions that may be imposed on the perpetrator and protective measures for the victims through protective and restrictive orders which are overall in line with international standards and good practice.⁸⁹ The proposed amendments to par 3 of Article 21¹⁵ on protective orders broaden the nature of such measures by requiring perpetrators to participate in treatment/rehabilitation programmes, which is positive.

⁸⁵ E.g. ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible and enabling victims to testify in the courtroom without being present or at least without the presence of the alleged perpetrator.

⁸⁶ See pars 290 and 292 of the Explanatory Report to the Istanbul Convention.

⁸⁷ See par 16 (l) of the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (as adopted by the UN Economic and Social Council Resolution 2010/15) available at <http://www.un.org/en/ecosoc/docs/2010/res%202010-15.pdf>.

⁸⁸ See Section 3.9.2. of the 2012 UN Women Handbook for Legislation on VAW.

⁸⁹ See par 29, Part IV, “A Framework for Model Legislation on Domestic Violence”, Report of the Special Rapporteur on violence against women, its causes and consequences (1996) available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/0a7aa1c3f8de6f9a802566d700530914>.

95. The other proposed amendment to par 3 of this Article introduces an additional restrictive measure which may be included in a protective order, i.e. “keeping the abuser away from the place of the victim’s residence”. Such wording does not expressly provide for the possibility to compel the perpetrator to vacate the family residence/home, even where the perpetrator is the owner of the premises,⁹⁰ whereas this is specifically mentioned for the restrictive court order. It is recommended to clarify the wording of the amendment to par 3 of Article 21¹⁵ of the Administrative Procedural Code by expressly stating the possibility to remove the abuser from the premises *irrespective of who is the owner of the premises*. The same clarification should be made to the proposed amendment to par 3 sub-par f¹ of Article 16 of the Law, on the duties of the police.
96. Article 21¹⁵ par 3 sub-par j and par 4 sub-par f¹ of the Administrative Procedural Code provides for a “warning about the responsibility envisaged by Georgian legislation in the event of violation of requirements prescribed by the order”. It is unclear whether this implies that in case of the first violation of a restrictive or protective order, the authorities may then issue another order containing such a “warning”. If this is the case, then, rather than imposing a warning, law enforcement bodies should act immediately upon a violation of the protective or restrictive order (see also comments on the nature of the response by the police in par 100 *infra*).
97. In addition, these provisions do not indicate whether the violation will trigger administrative, civil or criminal liability. In that respect, it is usually acknowledged that criminalizing the violation of restrictive or protective orders is extremely important in ensuring the effectiveness of legislation.⁹¹ Consequently, it is recommended to supplement Article 21¹⁵ par 3 sub-par j and par 4 sub-par f¹ of the Administrative Procedural Code to clarify that the violation of such orders is subject to criminal liability as defined by the Criminal Code and to amend the Criminal Code to introduce a criminal offence for such violations.⁹²
98. The consequences of the violation of the orders, i.e. criminal liability and related penalties, should be systematically indicated in all protective and restrictive orders. This should not be optional, as the wording of par 5 of Article 21¹⁵ of the Administrative Procedural Code seems to imply. In this way, the alleged perpetrator will be aware of the consequences of the violation of the orders and the related criminal penalty. Also, if not already the case, adequate training of the police and the judiciary on the contents of these orders should be provided.
99. Furthermore, pars 3 and 4 of Article 21¹⁵ of the Administrative Procedural Code do not contemplate the protection of relatives of the victim, other witnesses, social workers or other persons assisting the victim. These provisions could be supplemented

⁹⁰ See examples from other countries in Section 3.10.3 of the 2012 UN Women Handbook for Legislation on VAW.

⁹¹ See page 9 of the UN Expert Group Meeting on Good Practices in Legislation on Violence Against Women, Expert Paper by Cheryl A. Thomas on Legal Reform on Domestic Violence in Central and Eastern Europe and the Former Soviet Union, 17 June 2008, available at [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20\(Cheryl%20Thomas\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20(Cheryl%20Thomas).pdf). See also Section 3.10.9 of the UN Women Handbook for Legislation on VAW.

⁹² For example of criminal penalty imposed in other countries, see Section 3.10.9 of the UN Women Handbook for Legislation on VAW.

- accordingly, since these persons, due to their association with the victim, may also be in need of protection.⁹³
100. The newly amended par 6 of Article 16 of the Law states that the police shall supervise the observance of the measures provided by the restrictive and protective orders and “shall be obliged to respond to the violation of provisions in the issued orders in accordance with law”. It is not clear what this would imply. The police should have the authority to enforce protective and restrictive orders in cases of domestic violence, and should also be able to impose penalties for breaches of those orders. If such powers cannot be granted to the police, based on existing legislation, then measures must be taken to ensure timely access to court in order to ensure swift action by the court.⁹⁴ It is recommended to clarify the nature of the response by the police, *inter alia* by specifying that the violation of these orders is subject to criminal liability, and by referring to the Criminal Procedure Code as appropriate.
101. Article 21¹² of the Administrative Procedural Code provides that, for the issuance of protective orders, “the victim as well as a family member has the right to apply to court, while in the case of violence against a minor, tutorship and guardianship authorities have such right.” Paragraph 2 provides for the possibility of the person rendering medical, legal or psychological aid to apply to court with the consent of a victim, which is a positive measure. However, it is unclear from the wording of this Article whether it refers to “family members” as defined by the Law or family members as defined by other legislation, and this should be clarified.
102. Also, this provision implies that the child victim shall address tutorship and guardianship authorities, which appear to be the only competent bodies authorized to act on his/her behalf. Should this be the case, this appears to be an unduly complicated procedure for a child victim to gain access to justice.
103. In order to address the specific needs of children victims of domestic violence, the drafters may consider introducing a duty for certain professional categories as deemed appropriate (e.g. teachers, doctors, social workers, etc.) to apply to court without necessarily obtaining a formal consent from the child victim.⁹⁵ Alternatively, these professionals may have a duty to notify the tutorship and guardianship authorities if they have reasonable cause to suspect that a child is a victim of domestic violence. In both cases, as mentioned in pars 56-57 *supra*, it is important to introduce a provision obliging these authorities to inform the child, and seek his/her views on the way forward, and requiring their decisions to be motivated, and based on the child’s best interest.
104. Also, as mentioned in pars 51 and 88-92 *supra*, special measures should be ensured in order to protect children’s rights during the justice process.⁹⁶ It is recommended to clarify and supplement Article 21¹² of the Administrative Procedural Code accordingly, or if such provisions already exist, to make reference to them.
105. Finally, even though Georgia has not ratified the CRPD, the drafters should also consider introducing some specific and adequate assistance measures, including

⁹³ *Op. cit.* footnote 89, par 35.

⁹⁴ *Op. cit.* footnote 87, par 15 (h).

⁹⁵ *Op. cit.* footnote 45, Article 3 par 1.

⁹⁶ See par 293 of the Explanatory Report to the Istanbul Convention and Article 31 of the Lanzarote Convention.

- through the provision of procedural and age-appropriate accommodations, to support persons with disabilities and guarantee their access to justice in case they are victims of domestic violence, in line with Articles 12 and 13 of the CRPD.
106. The new par 5 of Article 10 of the Law specifies that the “application of measures envisaged in criminal law against the person committing domestic violence act does not impede the issuance of a restrictive order for the protection of domestic violence victim”. This is a very welcome amendment in line with Article 53 of the Istanbul Convention, which aims to ensure the possibility for victims to obtain a restraining or protection order, regardless of whether or not they choose to set in motion any other legal proceedings. However, it is unclear why the proposed amendment does not also address the issuance of a “protective order”.
107. The new par 6 of Article 10 of the Law provides that if the prosecution against the perpetrator has started, the “competent body shall consider and make a decision about the application of restrictive measures against the perpetrator to ensure the protection of domestic violence victim in compliance with criminal proceedings.” It is understood that this refers to the restrictive measures listed in the new Article 199 of the Criminal Procedure Code. It must be highlighted that the type of measures that may be decided according to the Criminal Procedure Code (as amended) are considerably more limited than the ones contemplated by the Administrative Procedural Code for the “protective orders” issued by the court.⁹⁷ Many of the key protective and restrictive measures are not included, such as the removal of the alleged perpetrator from the family home, the separation of the minor from the alleged perpetrator and regulating their meetings and relationships, requiring the payment of certain costs and fees, etc.
108. In that respect, international good practices recommend to state that protection orders are to be issued in addition to and not *in lieu* of any other legal proceedings.⁹⁸ This is also clearly stated in par 273 of the Explanatory Report to the Istanbul Convention.⁹⁹ Consequently, it is recommended to state clearly in new par 5 of Article 10 of the Law that the application of measures envisaged in the Criminal Code against the perpetrator should not prevent the issuance of a restrictive order *or a protective order* for the protection of domestic violence victims. The new par 6 of Article 10 of the Law should then be deleted.
109. In line with Article 53 par 2 of the Istanbul Convention, it is also recommended to expressly mention that such measures may be issued by the court even in the absence of and without representation of the respondent party (*ex parte*), which may require an amendment of the Administrative Procedural Code.
110. Finally, given the importance of practicing a “zero tolerance” policy towards domestic violence, it would be important to expressly introduce into Article 16 of the Law, on

⁹⁷ They include the prohibition on staying at or entering a particular place, the prohibition of meeting with certain people without a special permission, other measures prescribed by court that are indispensable for the purpose of application of a preventive measures including appearing at a particular place and prohibiting to have contact with the victim once the persecution has commenced on a charge of violence in a family or domestic violence. However, many other

⁹⁸ See Section 3.10.2 of the 2012 UN Women Handbook for Legislation on VAW.

⁹⁹ See par 273 of the Explanatory Report to the Istanbul Convention which states that “the fact that criminal or civil proceedings concerning the same set of facts are underway against the same perpetrator shall not prevent a restraining or protection order from being issued.”

the duties of the police, the possibility or even the obligation for the bodies of internal affairs to *ex officio* initiate criminal investigations against perpetrators for actions committed in certain cases (to be defined, e.g. when the victim is a child or an incapacitated person). These shall include cases involving serious bodily harm on others, certain sexual offences, coercion, or other criminal offences that the perpetrator may have committed. Article 55 of the Istanbul Convention provides that investigations into or prosecution of certain offences (physical violence; sexual violence, including rape; forced marriage; female genital mutilation; and forced abortion and forced sterilisation)¹⁰⁰ shall not be wholly dependent upon a complaint filed by the victim and that the proceedings may continue even if the victim withdraws the complaint. Consequently, if not already provided under current legislation, it is recommended to introduce amendments to the Criminal Procedure Code to that effect, and particularly to remove any requirement for victims to make a complaint before criminal investigations take place.

[END OF TEXT]

¹⁰⁰ Article 78 par 2 of the Istanbul Convention provides the possibility for the States party to the Convention to make a reservation in respect of minor offences of physical violence.

ANNEXES

1. Draft Amendments to the Law on the Elimination of Domestic Violence, Protection of and Support to its Victims

Draft

Georgian Law

Amendments to Georgian Law “On the Elimination of Domestic Violence, Protection of and Support to its Victims”

Article 1. The following amendments shall be made to the Georgian Law “On the Elimination of Domestic Violence, Protection of and Support to its Victims” (Legislative Herald of Georgia, N20, 09.06.2006, Article 171)

1. Subparagraph “e¹” shall be added to Article 4:

“Disregard - i.e. inattention of a parent or/and a lawful representative towards the child’s physical, psychological needs, restriction of the right to basic education, exposure to danger, failure to register birth, provide medical and other necessary services providing that parents and/or legal representative have adequate information, resources and availability of the service”.

2. Paragraph 5 shall be added to Article 9 as follows:

“5. Relevant agencies of the Ministry of Internal Affairs of Georgia, investigation bodies and court, as well as the group working under interagency council on the elimination of domestic violence defining the status of a victim of domestic violence in accordance with the rule specified by this law shall ensure the disclosure of the facts of domestic violence and adequate response to them. The obligation of the primary identification of the fact of domestic violence and its reference to relevant bodies for response lies on medical, educational and childcare institutions, social service agency, authorized employees of tutorship and guardianship establishments” and other relevant subjects envisaged by legislation.

3. Subparagraphs 5, 6 and 7 shall be added to Article 10 as follows:

“5. Application of measures envisaged by criminal law against the person committing domestic violence act (enforcement mechanisms of criminal law) does not impede the issuance of a restrictive order for the protection of domestic violence victim.

6. If persecution against the abuser has started on a charge of domestic violence or committing the act of domestic violence, in the case of applying other preventive measures except for imprisonment, the competent body shall consider and make a decision about the application of restrictive measures against the abuser to ensure the

protection of domestic violence victim in compliance with criminal proceedings.

7. With the aim of the abuser's rehabilitation, protective order may envisage provision of a compulsory rehabilitation training course oriented at changing the abuser's behavior or attitude to violence. The rule of conducting and organizing the rehabilitation training course oriented at changing the abuser's behavior or attitude to violence prescribed by the protective order is defined in accordance with the Georgian legislation.

4. Article 14¹ shall be added to the law

“Article 14¹. Detection of the incident of domestic violence against a minor (child)

1. The obligation of revealing the fact (the primary identification) of domestic violence against a minor (child) and addressing relevant bodies for response lies on medical, educational and childcare institutions, social service agency, and authorized employees of tutorship and guardianship establishments as well as other relevant institutions and their authorized employees involved in children's protection referral procedures envisaged by legislation.
2. Failure of institutions involved in children's protection referral procedures envisaged by legislation to comply with the obligation of revealing violence against a child and informing the relevant state agency about the fact of violence shall result in holding them responsible in compliance with the set rule”.

5. Subparagraph f¹ shall be added to paragraph 3 of Article 16:
“f¹) The abuser shall be kept away from the victim's place of residence under this law in order to ensure the victim's security, if such necessity arises;

6. Paragraph 6 of Article 16 shall be worded as follows:
“6. Police shall supervise the observance of terms and requirements provided by protective and restrictive orders and shall be obliged to respond to the violation of provisions in the issued orders in accordance with law”.

7. Paragraph 1 of Article 16¹ shall be worded as follows:
“1. The group (Victim Identification Group) working under interagency council on the elimination of domestic violence defining the status of a victim of domestic violence along with other state bodies specified by this law (relevant bodies of the Ministry of Internal Affairs of Georgia, investigation bodies and court) shall ensure awarding the status of a victim if no protective or restrictive order is being issued or no criminal prosecution measures are being taken with the aim of victim's protection. The status awarded to the victim by the Victim Identification Group shall be valid during 18 months from the date of awarding, while in the case the victim's placement in the shelter, the above status shall be valid for the length of time of placement in the shelter determined by this law.”

8. The heading of chapter 6 of the law shall be worded as follows:
“Chapter 6”. The Rights of Domestic Violence Victims, their Social and Labor Guarantees, Abuser’s Rehabilitation Measures”.

9. Articles 16² and 16³ shall be added to the law as follows:

“Article 16². Victim’s rights and protection guarantees

1. The victim of domestic violence (presumptive victim) has the right to:
 - a) Address the corresponding state body with the request of issuance of protective or restrictive order or demand due response to the violation of terms provided by the issued protective or restrictive order;
 - b) Address the corresponding state body in case of the violation of the terms provided by protective and restrictive order with the request to apply enforcement mechanisms of criminal law for the elimination of domestic violence with the consideration of the graveness of the fact of violence;
 - c) Address the corresponding judicial body with the request to recover damage resulting from domestic violence;
 - d) Receive compensation under the rule defined by the law if the damage inflicted to the victim cannot be recovered according to subparagraph c) of this Article and /or other sources engaged in victim services and protection envisaged by this law and Georgian legislation.
 - e) Enjoy services of a shelter/crisis centre;
 - f) Enjoy free legal consultation, emergency medical care and psychological assistance while staying in the shelter/crisis centre;
 - g) During the placement in the shelter/crisis centre, the victim’s labor relations can be suspended in accordance with the set rule;
 - h) Enjoy legal and other social mechanisms of protection provided by this law and Georgian legislation.
 - i) Address the corresponding state body in order to get temporary residence permit for the period of the victim’s stay in Georgia if the victim is a foreigner or does not hold the citizenship of Georgia;
2. When applying criminal prosecution measures against domestic crimes, special protection measures envisaged by Criminal Procedures Code of Georgia can be taken with the aim of protection of the victim of domestic violence and other parties to the process.
3. At any stage of carrying out criminal proceedings concerning domestic crimes, among them during the interrogation, the best interests of a minor witness (the aggrieved party) shall be taken into consideration and psychological support adequate for the age and level of development of the latter shall be provided. It is inadmissible to interrogate a

minor witness or question (demand explanation from) the minor witness while issuing the protective or restrictive order in the presence of a violent parent (parents). Neither it is admissible to allow the parent/legal representative to be present at the interrogation (questioning) process of a minor if there is a suspicion of bias due to the nature of existing relationships between the violent family member and parent/legal representative or given other cases of conflict of interests, also getting them familiar with (or handing over) the evidence (interrogation record, explanation) given by a minor. In this case, the parent's right to act as the child's representative in criminal/administrative proceedings may be suspended by court. Tutorship and guardianship body shall appoint a child's representative who will represent the interests of a child at the court hearing.

4. Temporary residence permit shall be issued to the victim of domestic violence who is a foreign citizen or does not hold the citizenship of Georgia in accordance with the Georgian legislation upon the application of institutions providing victim services or the body processing a case.

5. A foreign citizen or a person not holding Georgian citizenship, being the victim of domestic violence may not be repatriated on the assumption that the person's security will not be protected and guaranteed upon return.

Article 16³. Informing the Victim

1. The body issuing the protective and restrictive order, Victim Identification Group, the body processing the case, institutions providing victim services and other bodies authorized by law are obliged to inform the victims of domestic violence and explain in clear language the mechanisms of social and legal protection as well as relevant services available in the country for domestic violence victims.
2. Institutions engaged in the provision of services for victims of domestic violence and other bodies authorized by law shall inform the victims of domestic violence if necessary and provide relevant assistance in filing the suit and further proceedings concerning domestic violence and damage recovery resulting from violent actions.
3. Police and other bodies dealing with criminal proceedings are obliged to inform the victim of domestic violence immediately about the release of an abuser or/and other cases of leaving the place of confinement”.

10. Article 18² shall be added to the law as follows:

“Article 18². Maintaining the residence for temporary use by the victim

In the case when the victim is not placed in the shelter/crisis centre and has the wish to stay in his/her place of residence, protective and restrictive order shall define the issue of keeping the abuser away temporarily from the place. In accordance with protective and restrictive order, the police are authorized to keep the abuser away from the victim's place of residence even if the abuser owns the residence”.

11. Article 19¹ shall be added to the law as follows:

“Article 19¹. Hotline Service

1. With the aim of assisting the victims of domestic violence and providing consultations on relevant issues, a 24-hour hotline service shall be created countrywide. The telephone service shall be free for all subscribers.
2. By means of free hotline service, any interested person shall be informed about response mechanisms and measures of protection against domestic violence.
3. Hotline telephone network will respect confidentiality and shall not disclose the received information unless any exceptions are provided by the law”.

12. Article 20 shall be worded as follows:

Article 20. Rehabilitation Measures for Abusers

Abuser’s rehabilitation implies the measures directed at the provision of social and psychological aid for the abuser, improvement of his/her state, healing with the aim of further avoidance of similar symptoms and ensuring the abuser’s safety in the future. Abuser’s rehabilitation measures, the rules of their implementation and forms are defined by the governmental rule of Georgia.

13. Paragraphs 5¹, 8 and 9 shall be added to Article 21 as follows:

“5¹. Georgian government shall ensure the implementation of all organizational-legal measures necessary for the functioning of free telephone hotline, also define the amount and terms of paying out compensation to the victim in compliance with this law.

“8. Before 1 January of 2014, Georgian government shall ensure the implementation of measures necessary for organizing a compulsory training course for the abuser oriented at changing the abuser’s behavior or attitude to violence as envisaged by protective order and define the authorized body for conducting such course.

“9. Before 1 December 2014, Georgian government shall be assigned to develop the rule of calculation of the amount of compensation for the victim of domestic violence and the procedure of payment according to the rule set by Georgian legislation.

14. Part 3 of Article 22 of the law shall be changed and worded as follows:

“3. The force of law shall be suspended until 1 July 2015, whereas the enforcement of Article 20 of this law shall be suspended until 1 December 2014”.

15. Paragraph 4 shall be added to Article 22 of this law as follows:

“4. Enforcement of Article 16² of this law shall be suspended until 1 December 2014”.

Article 2. The law shall come into effect on the 15th day after its publishing.

2. Draft Amendments to the Code on Administrative Offences of Georgia

Draft

Georgian Law on Amendments to the “Code on Administrative Offences of Georgia”

Article 1. The following amendments shall be made to the Code on Administrative Offences of Georgia (Gazette of the Supreme Soviet of Georgian SSR, #12, 1984, Art. 421)

1. Part 4 of Article 171 of the Code shall be removed.

2. Part one of Article 172 shall be worded as follows:

“1. Abuse of obligations of upbringing and educating children, providing housing, food and other conditions for their healthy growth by parents or statutory representatives, illegal purchase of narcotic drugs in small quantities by a minor or/and consumption of a narcotic drug without doctor’s prescription or any other misdemeanor (appear inebriated in public places, consumption of spirits) shall result in parents’ or statutory representatives’ warning or imposing a fine in the amount of GEL 50 to GEL 100”.

3. Article 172⁶ shall be added to the Code as follows:

“Article 172⁶. Violation of the rules of informing the authorized body in case of revealing violent action against a child.

1. Violation of the obligation to provide information about revealing violent action and child abuse against a child by the institutions or/and their authorized employees engaged in child protection referral procedures in compliance with legislation to relevant state agencies shall result in the warning of a physical person or imposing a fine in the amount of GEL 50, whereas the fine imposed on the respective legal entity shall amount to GEL 100.

4. Article 208 shall be worded as follows:

“Article 208. Judicial examinations of cases of administrative offences in district (city) courts

District (city) court examines administrative offence cases under Articles 42¹ and 42¹ 42², part 2 of Article 43, Articles 44-~~44~~³, 44⁵, 44⁷-44¹², 45, 46, 46¹, 48-49, 50¹-55⁴, 56, 57-59-, 59², 59³, 60, 60³, 61, 61¹, 63, 63¹, 64, 64¹, 65, 66-69, 71, 72¹-78, 79¹-82², 84-86, 88-89³, 91², 94, 95, 99, 100¹, 100², 103¹, 104 and 105¹, part 5 of Article 127¹, 128¹-128⁵, 143, 144, 144¹⁰, 145, 146¹, 148,

150–151, 152, 152²–153¹ and Articles 153³–153⁵, part 2 of Article 153⁶, 154 –154², 155¹–156, 157¹–158¹, 159–159¹, 159⁴–159¹⁰, 163, 164, 164⁴, 165¹–165³, 166, Articles 167 and 170, part 3 of Article 171, 171¹, ~~172~~, 172⁴, 172⁵, ~~172⁶~~, 173–~~3~~, 173⁴, 173⁶, 173⁷, 173⁹, 173¹², 174¹, 175¹, 175², 177⁸, 177⁹, 177¹¹, 178, 179¹–179³, 180–183, 187–187², 189, 191 (except for part 1 and 1¹ of Article 191), Articles 192, 195, 196²–196⁶ and 197¹”.

5. Part 1 of Article 209 shall be given the following wording:

“1. Internal Affairs Agencies examine the cases of administrative offences envisaged by the following Articles of this Code: 107¹–107³, 108, 114¹, 114², 116, 117, 118–119, 120–123, 125 and 127, Parts 1 and two of Article 128¹, 129¹, 131 (offences related to motor vehicles), Articles 134, parts 1 and 3 of Article 153⁶, parts 2 and 4 of Article 171, 176¹, 182¹, 182², Articles 190 and 190², parts 1 and 1¹ of Article 191 (among them offences related to border crossing point)”

6. Part 13 of Article 239 shall be given the following wording:

“13. Reports on administrative offences shall be drawn up by Internal Affairs Agencies as specified in the following Articles of this Code: 45, 81, 107, 114¹, 114², 116, 117, 118–123, 125 and 127, parts 1 and 2 of Article 127¹, 134, 150 and 153³, part 2 of Article 153⁶, 166, ~~172~~, 173, 174¹, 175², 176¹, 177¹, 180–183, 190 and 190², while in case of committing administrative offence by a military employee of the Ministry of Internal Affairs of Georgia envisaged in Articles 45, 166 and 197² of this Code, the report shall be drawn up by an authorized person of the Ministry of Internal Affairs of Georgia”.

7. Part 64 shall be added to Article 239 as follows:

“64. The report on administrative offences under Article 172⁶ of this Code shall be drawn up by authorized officials of respective agencies of the Ministry of Internal Affairs of Georgia, Ministry of Labor, Healthcare and Social Protection of Georgia, and the Ministry of Education and Science of Georgia, also local self-governance bodies within their competence”.

Article 2. The law shall become effective on the 15th day upon its publishing.

President of Georgia

Mikheil Saakashvili

3. Draft Amendments to the Administrative Procedural Code of Georgia

Draft

Georgian Law on the Amendments to the Administrative Procedural Code of Georgia

Article 1. The following amendment shall be made to the Administrative Procedural Code of Georgia (Legislative Herald of Georgia, N39 (46), 1999, Art.190):

1. Subparagraph b¹ shall be added to part 3 of Article 21¹⁵ of the Code with the following wording:
“ b¹) the issue of keeping the abuser away from the place of a victim’s residence”;
2. To give the following wording to part 1 of Article 21¹² of the Code:
“1. In case of domestic violence, the victim (alleged victim of domestic violence), as well as the family member has the right to apply to court, while in the case of violence against a minor, tutorship and guardianship authorities have such right”.
3. Part 4 of Article 21¹⁴ of the Code shall have the following wording:
“4. The court shall consider the reasonability of issuance of a restrictive order within 24 hours upon its submission and take decision on its approval, rejection or partial approval. Failure of the police official in charge of issuing the restrictive order to appear at the court shall not impede hearing of the case and passing a judgment by the respective court.”
5. Part 6 of Article 21¹⁴ of the Code shall have the following wording:
“6. The court defines the term of validity of the restrictive order on the request of the police authority or any other party to a trial, or on its own decision, which shall not exceed 1 month”.
6. Paragraph i¹ shall be added to part 3 of Article 21¹⁵ of the Code worded as follows:
“ i¹) The issue of doing a compulsory training course by an abuser oriented at changing the behavior or attitude to violence;”

Article 2. The law shall become effective on the 15th day from the date of its publication

President of Georgia

Mikheil Saakashvili

4. Draft Amendments to the Civil Code of Georgia

Draft

Law of Georgia on Amendments to the “Civil Code of Georgia”

Article 1. The following amendments shall be made to Civil Code of Georgia (Parliamentary Newsletter №31, 24 July, 1997, p. 1)

1. Subparagraph 1¹ shall be added to Article 1198

“1¹. It is inadmissible to use the methods of upbringing of a minor by a parent (statutory representatives) that shall cause physical or psychological pain to a minor”.

2. Subparagraph 2¹ shall be added to Article 1198¹ as follows:

“2¹. Failure of organizations involved in child protection referral procedures and other entities working on child protection issues to fulfill the obligation of revealing the fact of violence against a child and inform the relevant state agency about the child abuse shall result in bringing them to responsibility in compliance with the legislation of Georgia.”

Article 2. The law shall become effective on the 15th day upon publication.

President of Georgia

Mikheil Saakashvili

5. Draft Amendments to the Criminal Code of Georgia

Draft

Georgian Law on Making

Amendments to the Criminal Code of Georgia

Article 1. The following amendment shall be made to the Criminal Code of Georgia (Legislative Herald of Georgia, №41(48), 1999, Art.209):

1. **Article 11¹ of the Criminal Code of Georgia shall be amended and given the following wording:**

Article 11¹. General responsibility for acts of domestic violence

Domestic crime refers to any crime committed by one member of a family against another prescribed in Articles 108, 109, 115, 117, 118, 120, 125, 126, 137, 141, 143, 144–144³, 149–151, 160, 171, 253, 255, 255¹, 381¹, 381² of this Code. Criminal liability for committing domestic crime shall be determined by the relevant Article of the Criminal Code of Georgia, with reference to the Article.

- Note: For the aims of this law, family members are considered the following persons: spouse, mother, father, grandfather, grandmother, child/(step child), foster child, foster parent, foster parent’s spouse, adoptive child, adoptive parents, guardian, grandchild, siblings, son-in-law, daughter-in-law, former spouse, also persons currently or formerly living in the same household.

1. **Article 65 of the Criminal Code of Georgia shall have the following wording:**
“Article 65. Imposing an obligation

In case of a suspended sentence, provided that it is awarded on reasonable grounds, the court can impose the convict to perform a certain obligation: not to change the permanent place of residence without the permission of a probation bureau, not to enter into relations with the person that can engage him/her in antisocial activity, not to visit the certain place, to give financial support to the family, to undergo treatment for alcoholism, drug abuse, toxicomania or sexually transmitted disease, also family abusers shall *do a compulsory training course oriented at changing the abuser's behavior or the attitude to violence;*” The court can assign the convict to other obligations that will favor his/her correctional rehabilitation.

2. Subparagraphs i), j), k) and l) shall be added to the second part of Article 126 of the Criminal Code of Georgia as follows:

- i) repeatedly;
- j) in the presence of a minor against his/her family member;
- k) against a group of persons;
- l) by threat or use of a weapon,

4. Part 1 of Article 137 of the Criminal Code of Georgia shall have the following formulation:

“Article 137. Rape

- 1. Rape, i.e. sexual intercourse or other kind of sexual relation carried out by any part of the body or an object, which is committed by violence, threat of violence or abusing the helplessness of the victim shall be punishable by imprisonment extending from four to six years in length”.

5. Article 150¹ shall be added to the Criminal Code of Georgia

“Article 150¹. Forced marriage

- 1. Forced marriage (including that of unregistered) shall be punishable by fine or socially useful labor from 120 to 180 hours in length or imprisonment extending up to one year.
- 2. The same action,
 - a) committed at the previous knowledge against the minor,
 - b) that has resulted in marriage (including that of unregistered)shall be punishable by fine or imprisonment from two to four years in length.

6. Part two shall be added to Article 151 of Criminal Code of Georgia as follows:

“2. The same action committed with the use or threat of weapon shall be punishable by fine or imprisonment extending up to two years in length.

7. The note to Article 375 of the Criminal Code of Georgia shall be formulated as follows:

Note: Criminal liability shall be lifted up from the one who has covered up the crime of his/her close relative without aforethought.

Article 376. Non-Reporting of Crime

Non-reporting of crime by the one who actually knows that any grave or especially grave crime is being prepared, shall be punishable by fine or by jail time from three to six months or by imprisonment up to three years in length.

“Note”: A person shall not be held criminally liable for the crime under this Article and Article 376 of the Code who has covered up the crime of his/her close relative without aforethought, neither the person in charge of the shelter for trafficking victims in compliance with the Georgian Law on Combating Trafficking, the member of a standing group under coordination council implementing measures against combating trafficking; the member of the group identifying the status of a victim of domestic violence under the interagency council for implementation the measures envisaged by the Georgian law on “Elimination, Protection of and Support to Victims of Domestic Violence”, the person in charge of the shelter for victims of domestic violence and crisis centre (except for the crime against a minor), free hotline operators providing consultations to victims of domestic violence.”

Article 2. The law shall come into force on the 15th day from its publishing

President of Georgia

Mikheil Saakashvili

6. Draft Amendments to the Criminal Procedures Code of Georgia

Draft

Law of Georgia

Amendments to be Made to the Criminal Procedures Code of Georgia

Article 1. The following amendments shall be made to the Criminal Procedures Code of Georgia

(Legislative Messenger of Georgia , N 31, 03.11.2009, Art. 190)

1. Subparagraph f) shall be added to part 1 of Article 168¹ as follows:

“f) Domestic violence abuser shall attend a compulsory training course oriented at changing the abuser’s behavior and attitude to violence” .

2. Subparagraph d) of part 3 of Article 182 shall be worded as follows:

“d) with the purpose of protecting the interests of the victim of sexual offence, trafficking or domestic violence”;

3. Part 2 of Article 199 shall be worded as follows:

2. Along with preventive measures, the following restraints may apply to the accused person: liability to appear in the court at the appointed time or upon summon; prohibition on conducting particular activities, among them professional; obligation to appear in the court, police or other state authority and report on a daily or on any other regular basis; supervision by an agency assigned by court; electronic monitoring; obligation of being at a particular place at a fixed or any other time; prohibition on staying at or entering a particular place; prohibition on meeting with certain people without special permission; obligation to submit passport or any other identification document; any other measures prescribed by court that are indispensable for the purpose of application of a preventive measure, including appearing at a particular place and prohibiting to have contact with the victim once the prosecution has commenced on a charge of violence in a family or domestic violence.

Article 2. The law shall become effective on the 15th day upon publishing.

President of Georgia

Mikheil Saakashvili

7. Draft Amendments to the Imprisonment Code of Georgia

Draft

Georgian Law on Amendments to the “Imprisonment Code”

Article 1. The following amendments shall be made to the Imprisonment Code (Legislative Messenger of Georgia, N12, 24.03.2010, Art. 49):

1. Part 7 shall be added to Article 118 as follows:

“7. With the purpose of the rehabilitation of domestic violence abuser, the Ministry shall organize compulsory training courses oriented at changing the abuser’s behavior and attitude to violence . The ministry shall ensure launching of the compulsory training course oriented at changing the abuser’s behavior and attitude to violence in cooperation with state bodies and other interested parties as well as organizations having sufficient experience of working in the relevant sphere.”

2. Part 7 shall be added to Article 125:

“7. Before 1 January 2014, the Ministry shall ensure the organization of the training course oriented at changing the abuser’s behavior and attitude to violence for domestic violence abusers, taking all necessary measures for its implementation and shall determine the length of course for convicts”.

Article 2. The law shall become effective on the 15th day upon publishing

President of Georgia

M. Saakashvili

8. Draft Amendments to the Law on Legal Status of Foreigners and Stateless Persons

Draft

Law of Georgia on making amendments to Georgian Law on “Legal Status of Foreigners and Stateless Persons”

Article 1. The following amendments shall be made to the law of Georgia on “Legal Status of Foreigners and Stateless Persons” (Legislative Messenger of Georgia, N3, 16.01.2006, Art.16):

1. Subparagraph i) shall be added to paragraph 1 of Article 19 as follows:
“i) who represents a victim of domestic violence in accordance with the Georgian Law on the “Elimination, Protection of and Support to the Victims of Domestic Violence”
2. Subparagraph 2³ shall be added to Article 22 as follows:
“23. A foreigner who is the victim of domestic violence shall be issued and extended the temporary residence permit by the Agency on the ground of motion of Domestic Violence Victim Service Agency or the relevant proceeding body”.
3. Subparagraph d²) shall be added to paragraph 3 of Article 58 as follows:
“d²) A foreigner, who is a victim of domestic violence until completion of relevant proceedings or/and during the period of temporary stay in a shelter in compliance with the Georgian law on the “Elimination, Protection of and Support to the Victims of Domestic Violence”

Article 2. The law shall become effective on the 15th day upon publishing.

President of Georgia

Mikheil Saakashvili

9. Draft Amendments to the Law on Procedure of Execution of Non-custodial Penalties and Probation

Draft

Georgian Law on Making Amendments to the “Law on Procedure of Execution of Non-custodial Penalties and Probation”

Article 1. The following amendments shall be made to the Georgian law on “Procedure of Execution of Non-custodial Penalties and Probation” (Legislative Messenger of Georgia, №24, 02.07.2007, Art. 219)

Subparagraph 3¹ shall be added to Article 40 as follows:

“3¹. Obligation imposed on domestic violence offender - to undertake a compulsory training course oriented at changing the abuser’s behavior and attitude to violence shall be organized on the basis of memorandum with the National Probation Agency by a social institution with relevant experience (competence), non-entrepreneurial legal person or an individual having adequate education”.

1. Paragraph 5 shall be added to Article 44³ as follows:

“5. With the purpose of rehabilitation of a domestic violence abuser, National Probation Agency organizes compulsory training courses oriented at changing the abuser’s behavior and attitude to violence. National Probation Agency shall organize the compulsory training courses oriented at changing the abuser’s behavior and attitude to violence in cooperation with other interested parties and organizations having sufficient experience in the relevant sphere”.

2. Article 45³ shall be added to the law:

“Article 45³.

National Probation Agency shall ensure organization of the compulsory training course oriented at changing the abuser’s behavior and attitude to violence for offenders who are awarded deprivation of freedom or are serving the conditional sentence by 1 January 2014”.

Article 2. The law shall become effective on the 15th day upon publishing

President of Georgia

Mikheil Saakashvili

10. Draft Amendments to the Law on Refugee and Humanitarian Status

Draft

Amendments to be made to

the Law of Georgia on “Refugee and Humanitarian Status”

Article 1. Article 2 of the Law of Georgia on “Refugee and Humanitarian Status” (website, 111220009, 20/12/2011, registration code 010170000.05.001.016513) shall be worded as follows:

“ Article 2. Granting the Refugee Status

Refugee status is granted to a person without Georgian citizenship or a stateless person who is permanently living in Georgia, is staying in Georgia, of who there is the ground of reasonable assumption that s/he may become the victim of persecution for the reasons of race, religion, national identity, *sexual orientation and gender identity*, membership of a social group or political opinion and who is unable or is unwilling to return to the country of origin or avail himself of the protection of his country owing such danger”.

Article 2. The law shall become effective on the 15th day upon publishing.

President of Georgia

Mikheil Saakashvili

11. Draft Amendments to the Law on Medical Activity

Draft

Law of Georgia

On making amendments to the law of Georgia “On Medical Activity”

Article 1. The following amendments shall be made to the Law of Georgia “On Medical Activity” (Legislative Messenger of Georgia, №18, 28.06.2001, Art. 62):

Subparagraph f¹) shall be added to paragraph 2 of Article 48 of the law:

“f¹) is associated with the possible commitment of domestic violence or/and there is a danger of a repeated act of violence and the information is provided to the relevant state agency for the protection of patients’ rights and interests.”

2. Subparagraph c) shall be added to Article 49 of the law as follows:

“c) there are facts of violence against patient or/ and other family member and there is danger of the repeated violent action, if any necessity of interference arises for the purpose of protection of patient’s rights and interests.”

Article 2. The law shall become effective on the 15th day upon publication.

President of Georgia

Mikheil Saakashvili

12. Draft Amendments to the Law on Legal Aid

Draft

Law of Georgia

On making amendments to the Law of Georgia on “Legal Aid”

Article 1. Subparagraph 2 of Article 26 of the law of Georgia on “Legal Aid” (Legislative Messenger of Georgia, (Nº24, 02.07.2007, Art. 218) shall be worded as follows:

“2. This law in the part of civil and administrative judicature, except for the case of conducting free defence and the assistance for the protection of victims of domestic violence as prescribed by the Administrative Procedure Code of Georgia, shall be enacted from 1 January 2015.”

Article 2. The law shall become effective on the 15th day upon publishing.

President of Georgia

Mikheil Saakashvili

13. Current Law on the Elimination of Domestic Violence, Protection of and Support to its Victims

Law of Georgia

on Elimination of Domestic Violence, Protection of and Support to Its Victims

Article 4. Use of Terms in the Law

The concept and terms used in the Law shall be given the following meaning:

a. Physical violence- battery, torture, injury, restriction of liberty or any other action that causes physical pain or suffering, restriction of food, accommodation and other conditions for normal development, as well as isolation of the minor from his/her parents (custodian), or failure to meet requirements concerning his/her state of health that may cause harm or death of a family member.

b. Psychological violence- offence, blackmail, degrading treatment, threat or any other act that violates pride and dignity of the human being;

c. Coercion- physical or psychological coercion of the person to perform or to abstain from performing an act, performance or non-performance of which represents the

right of the person, or coercion to stand certain influence against his/her will;

d. Sexual violence- an act that violates sexual liberty and integrity of the person, by use of threat or taking advantage of victim's helplessness, as well as sexual intercourse with or other act of sexual nature or immoral act against the minor;

e. Economic violence- restriction of the right to property, right to engage in labor activities and right to enjoy property in joint possession and dispose of one's own lot;

f. Victim- family member, experiencing physical, psychological, sexual, economic violence or coercion,

g. Family members- mother, father, grandfather, grandmother, spouse, child (stepchild), adopted child, foster parents, grandchild, siblings, parents of spouse, children-in-law. For the purpose of this law family members also include former spouse, persons in non-registered cohabitation, custodian.

(f. Victim- family member, experiencing physical, psychological, sexual, economic violence or coercion, to whom status of victim has been awarded by the relevant service of the Ministry of Internal Affairs or/and Judicial body or/and the Victim Status Identification Group (*28.12.2009 N 2507 to become effective from 1 April 2010*).

h. Abuser- member of family who inflicts, physical, psychological and economic violence or coercion against another family member.

i. Shelter- temporary residence of domestic violence victims; or a place of temporary placement of the domestic violence victim, founded in the system of the Ministry of Labor, Healthcare and Social Protection or on the basis of an NGO, where victims are provided with psychological and social rehabilitation, legal and medical and protection services. Until enforcement of Chapter 6 of the law- families of friends and relatives.

j. Rehabilitation Centre- place of temporary accommodation of the abuser, serving the purpose of the abuser's rehabilitation, crisis intervention and medical assistance which shall be created in accordance with established guidelines in the system of the Ministry of Labor, Healthcare and Social Protection or by a non-entrepreneurial legal person.

(j) Abusers' rehabilitation measures - measures encompassing abuser's rehabilitation and crisis intervention in accordance with the standards established by legislation of Georgia; (*28.12.2009 N 2507 to become effective from 1 April 2010*)

k) Crisis Centre – the place for domestic violence victims’ temporary accommodation providing psychological and social rehabilitation service, first aid and urgent medical service as well as legal assistance. The placement of a person (or his/her dependants in the Crisis centre is possible before and after identifying the victim’s status unless the victim does not desire to be placed in the shelter needing only psychological and social rehabilitation or/and legal assistance or/and first aid and urgent medical service without being placed in the shelter; *(28.12.2009 N 2507 to become effective from 1 April)*

Article 9. Mechanisms for Identification and Elimination of Domestic Violence

1. To the ends of identification and elimination of domestic violence, criminal, civil and administrative law mechanisms shall apply.
2. Criminal law mechanisms shall apply where an act of domestic violence contains elements of a criminal offense.
3. Civil law mechanisms shall apply where the damage inflicted gives rise to obligation to compensate damages in accordance with the civil law.
4. Administrative law mechanisms shall apply where an act is of insignificant public danger, does not give rise to criminal responsibility and which can be dealt with by application of administrative law provisions.
(4. Administrative law mechanisms shall applied by means of issuance of protective/restrictive order, also where an act is of insignificant public danger, does not give rise to criminal responsibility and which can be dealt with by application of administrative law provisions. *(28.12.2009 N 2507 to become effective from 1 April 2010)*)

Article 10. Protective and Restrictive Orders

1. For the purpose of immediate effect (response), protection of the victim and certain restriction of the abuser’s activities, relevant bodies as a temporary measure may issue a protective or restrictive order.
2. A protective order is in act issued by the first instance court judge based on administrative proceedings, which defines temporary protection measures of victims in cases of domestic violence, except cases, where the grounds for instituting a criminal proceeding exists and the person is deprived of liberty based on the restrictive measure.
(2. A protective order is in act issued by the first instance court judge based on administrative proceedings, which defines temporary protection measures of victims. *(28.12.2009 N 2507 to become effective from 1 April 2010)*)
3. Restrictive order is an act issued by the authorized employee of police, which defines temporary protection measures of victims in cases of domestic violence and which shall be submitted to the court for approval within 24 hours upon its issuance.
4. Failure to comply with the conditions prescribed by protective and restrictive order

shall lead to criminal responsibility of the abuser.

(4. Failure to comply with the conditions prescribed by protective and restrictive order shall lead to criminal responsibility of the abuser in compliance with the rule established by legislation of Georgia. *(28.12.2009 N 2507 to become effective from 1 April 2010)*)

Article 16. Duties of the Police

1. In cases of domestic violence Police shall immediately respond to the fact and take all legal measures. Police shall not be authorized to consider domestic violence case inferior to other cases of violence. (1. In case of receiving notification of the fact of violence, the police shall immediately respond and take measures prescribed by law *(28.12.2009 N 2507 to become effective from 1 April 2010)*)

2. In case of receiving notification of the fact of violence, the police shall immediately report to the scene, notwithstanding whether notification was received from the victim, witness of violence or other person as set by Article 11.

3. Where case of violence emerges, the police shall:

a. take all legal measures to eliminate the fact of domestic violence;

b. separately interview the possible victim, witnesses, abuser, including children, which shall be recorded;

(b) separately interview the possible victim, witnesses, abuser, including children, which shall be recorded *(28.12.2009 N 2507 to become effective from 1 April 2010)*)

c. inform the victim of domestic violence of his/her rights

d. Upon request of the victim or in case of necessity, to ensure transfer of the victim to the institution of medical care;

e. Upon request of the victim or in case of necessity, to ensure the transfer of the victim or his/her children to the shelter;

(e. Upon request of the victim or in case of necessity, to ensure the transfer of the victim or his/her children to the shelter; *(28.12.2009 N 2507 to become effective from 1 April 2010)*)

f. In case of transfer to another location, to ensure that a victim takes his/her personal belongings from the place of residence; *(28.12.2009 N 2507 to become effective from 1 April 2010)*)

g. To ensure safety of the person reporting the case of violence;

h. To issue a restrictive order as prescribed by law.

4. The police shall draw a record of the case of domestic violence and measures taken, which shall be submitted to the supervising prosecutor.

5. The police shall separately mention in its reports information (data) on the facts of domestic violence, measures taken, number of victims, measures enforced against the offender, as well as other data.

6. The police shall take responsive measures against the violations of protective and restrictive orders as set by law. *(28.12.2009 N 2507 to become effective from 1 April 2010)*

16¹. Awarding the Status of a Victim. *(28.12.2009 N 2507 to become effective from 1 April 2010)*

1. Awarding the status of a victim is ensured by state bodies as prescribed by this law (respective service of the Ministry of Internal Affairs, court) together with the group working under interagency council on the elimination of domestic violence defining the status of a victim of domestic violence (Status Identification Group).

2. The rule of victim identification and awarding the status of a victim by the group working under interagency council on the elimination of domestic violence defining the status of a victim of domestic violence (Status Identification Group) is defined by the Order N665 dated 5 October 2009 of the President of Georgia on “Approval of the rule of awarding the status of a domestic violence victim”.

Chapter 6

Social and Labor Guarantees for Domestic Violence Victims, Rehabilitation Measures for Abusers

Article 20. Abusers’ Rehabilitation Centers

In order to ensure temporary placement or/ and rehabilitation of the abuser, the Ministry of Labor, Healthcare and Social Protection, as well as non-entrepreneurial legal entity shall establish rehabilitation centers for abusers. Such centers shall meet the standards set by the Ministry of Labor, Healthcare and Social Protection for such type of institutions and ensure temporary placement, psychological assistance and treatment of abusers.

(Article 20. Abusers’ rehabilitation measures (28.12.2009 N 2507 to become effective from 1 July 2015.)

Abusers’ rehabilitation measures are directed at psychological and social assistance of an abuser and his/her healthy development, provision of treatment so that the abuser gets rid of obsessive habits (alcoholism, drug abuse or mental illness which may include insanity), the person’s recovery and rehabilitation to the avoid repeated act of violence and ensure the victim’s safety in the future. Abuser’s rehabilitation measures and the rules of their implementation are defined by the resolution of the government of Georgia.)

Article 21. Measures to be taken with Regard to Enactment of the Law.

1. Until enactment of Chapter VI of this law, the Ministry of Labor, Healthcare and Social Protection shall determine minimal standards for temporary shelters for victims of domestic violence and abusers' rehabilitation centers.

2. Before July 1, 2007, Ministry of Labour, Healthcare and Social Protection and local self-governance institutions shall define mechanisms for providing social services and support training (preparation) of social workers.

(2. Before July 1, 2015, Ministry of Labour, Healthcare and Social Protection and local self-governance institutions shall define mechanisms for providing social services and support training (certification) of social workers. *(28.12.2009 N 2507 to become effective from 1 April 2010)*)

3. Within 1 month upon publishing the law, the Ministry of Internal Affairs shall develop and approve a restrictive order form.

4. Request the Government of Georgia to approve a special plan determining special measures aimed at elimination of domestic violence and protection and assistance to victims of domestic violence within 4 months upon publishing the law.

(4. Government of Georgia shall ensure determining the rehabilitation measures for abusers by 1 July 2015 *(28.12.2009 N 2507 to become effective from 1 April 2010)*)

5. Government of Georgia shall ensure the development of information exchange mechanisms of cooperation regarding domestic violence between agencies *(28.12.2009 N 2507 to become effective from 1 April 2010)*

6. The Ministry of Internal Affairs shall ensure the creation of the database of protective and restrictive orders, timely exchange of information and accessibility. *(28.12.2009 N 2507 to become effective from 1 April 2010)*

7. The Ministry of Labor, Healthcare and Social Protection shall ensure the establishment and functioning of crisis centers of necessary minimal standards. *(28.12.2009 N 2507 to become effective from 1 April 2010)*

Article 22. Enactment of the Law

1. This law, except chapter 6 of Article 8, shall come into force upon publishing.

2. Article 8 of Chapter 6 of this law shall come into force as of January 1 2008.

3. Enactment of Articles 8 and 20 of the law shall be suspended by 1 July 2015.

(28.12.2009 N 2507 to become effective from 1 April 2010)